

ONTARIO ENERGY BOARD

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 Toronto Hydro-
System Electric Limited for an Order or Orders approving or fixing
just and reasonable rates and other service charges for the
distribution of electricity as of May 1, 2015.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of
Practice and Procedure*.

**RESPONDING MOTION AND CROSS MOTION RECORD
OF THE CANADIAN ELECTRICITY ASSOCIATION
(Re: School Energy Coalition's Notice of Motion dated December 19, 2014)**

January 21, 2015

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Barristers & Solicitors
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AND TO

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AND TO:

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AND TO:

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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 Toronto
Hydro-System Electric Limited for an Order or Orders
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AND IN THE MATTER OF Rule 27 of the Board's *Rules of
Practice and Procedure*.

AFFIDAVIT OF FRANCIS BRADLEY
(Sworn January 21, 2015)

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

1. I am the Vice President, Policy Development of the intervenor the Canadian Electricity Association ("CEA"), a national organization serving Canada's evolving electricity business with members from across Canada and elsewhere (I provide below a more extensive description of the CEA and its benchmarking/survey activities). One of my responsibilities is to manage the CEA's benchmarking and survey activities, which I have been doing for over 25 years. 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.

The SEC Motion and its Nexus with the CEA Property

2. I make this affidavit in response to the motion commenced on December 19, 2014 by the School Energy Coalition (“SEC”) seeking an order requiring Toronto Hydro-System Electric Limited (“Toronto Hydro”) “to provide a full and adequate response to Interrogatory 1B-SEC-8, specifically to produce benchmarking documents that THESL has participated in through the Canadian Electricity Association” (the “SEC Motion”). The SEC’s Interrogatory 1B-SEC-8 sought the following:

Please provide a copy of all benchmarking studies, analysis and/or reports in the possession of the Applicant, that it has undertaken, or that it has participated in, since 2011, that has not already been in the application.

3. Toronto Hydro has advised the CEA that in order to fully respond to Interrogatory 1B-SEC-8 it would have to provide copies of the following reports to the SEC (collectively, the “CEA Reports”):

- (a) 2014 National Attitudes Report (Innovative Research Group Inc.);
- (b) 2013 Public Attitudes Research Report (IPSOS Reid);
- (c) 2012 Public Attitudes Research Report (IPSOS Reid);
- (a) 2011 Public Attitudes Research Report (IPSOS Reid);
- (b) 2014 Multi-Client Budget Benchmark Report (Information Technology) (the “Gartner Report”);

- (c) 2013 Service Continuity Data on Distribution System Performance in Electrical Utilities (CEA);
- (d) 2012 Annual Service Continuity Report on Distribution System Performance in Electrical Utilities (CEA); and
- (e) 2011 Service Continuity Data on Distribution System Performance in Electrical Utilities (CEA).

4. Toronto Hydro providing copies of these reports to the SEC would disclose confidential benchmarking data provided to CEA by its members (the “CEA Data”), disclose proprietary and confidential data models used by CEA to analyze such data (the “CEA Data Models”) and copy and disclose proprietary reports prepared for and by CEA (collectively with the CEA Data Models, the “CEA Property”).

5. The CEA opposes the SEC Motion for two distinct business and policy reasons. First, the CEA owns the CEA Reports (all but most of the Gartner Report, as discussed below) and CEA Data Models, which cost the CEA a great deal of money to create and which it provides on a commercial basis only to a select group of its members. Second, the creation of the CEA Reports and CEA Data Models is only possible in a confidential environment where the CEA and its members know that both what the CEA is studying and member confidential information will not be revealed. Granting the SEC Motion would harm the CEA, as discussed further below, and if the SEC Motion is granted in whole or in any substantial part, the CEA will no longer provide such reports, data models and data to its members in Ontario.

6. Moreover, although the Ontario Energy Board (the “Board”) did not give the CEA enough time to engage with all of its members about the SEC Motion, several of its power utility members have advised CEA that they are opposed to the SEC Motion for the reasons set out in the letters attached as **Exhibit “A”**. I am informed by these entities that in addition to the harm to the CEA that would be caused by the SEC Motion being granted, which the CEA members oppose, these power utilities would be inclined not to participate in any future benchmarking and survey activities where copies of the resulting reports would be provided to entities that are under the jurisdiction of the Board. The CEA reserves the right to provide to the Board additional letters from its members if they arrive before the hearing of the SEC Motion.

7. In the context of a similar dispute last year with the SEC about the disclosure of CEA materials (which dispute settled), several CEA members provided letters of comment, which are attached as **Exhibit “B”**.

The Canadian Electricity Association

8. Founded in 1891, the CEA is the 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 and internationally. 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.

9. CEA contributes to the regional, national and international success of its members through the delivery of quality value-added services. In addition, the CEA gives its members a

productive and confidential space to exchange ideas and information in order to assist them to improve their services, and to formulate and advocate a coherent industry viewpoint to decision makers on critical policy and regulatory issues.

10. A list of CEA members is attached as **Schedule “1”**. By far the majority of the CEA’s power utility members are not located in Ontario.

11. One of the services provided by the CEA to its members is confidential benchmarking services. The CEA also commissions surveys concerning subjects of interest to its members. The CEA designs these surveys and benchmarking studies very carefully as a tool for helping its members to improve their operations – in an environment where its members’ data and the reports will be kept absolutely confidential.

The CEA Property

12. The CEA owns the CEA Reports, with the exception of the information technology budget report that is partly owned by Gartner, Inc. (pages 12 to 17, 32 and 33 are owned by the CEA).

13. The eight CEA Reports can be divided into two groups.

14. First, there are surveys designed and commissioned by the CEA that investigate public attitudes to matters of interest to the CEA (i.e. the 2014 National Attitudes Report and the 2011-2013 Public Attitudes Research Project Reports) (collectively, the “CEA Survey Reports”). The CEA Survey Reports were designed with the substantial involvement of the CEA, in consultation with CEA members, and the questions surveyed reveal the specific matters of interest to the CEA and its members, the disclosure of which would mean that companies would stop measuring their

performances with respect to these indicators. As a result, the CEA and CEA members would no longer benefit from the information provided in these surveys which provides information about areas where CEA members can improve. To be clear, the CEA Survey Reports do not concern benchmarking.

15. The CEA paid Innovation Research Group Inc. and incurred direct internal expenses of approximately \$145,000 for the 2014 National Attitudes Report.

16. With respect to the 2011-2013 Public Attitudes Research Project Reports, the CEA paid IPSOS Reid and incurred internal expenses of approximately \$125,000 per year.

17. The CEA includes the price and provision of the CEA Survey Reports as a core membership service, and they are a key selling point for membership in the association. In other words, one has to join the CEA to obtain the CEA Survey Reports. For this reason the CEA never consents to copies of the CEA Survey Reports being made or provided to others.

18. The CEA's contracts with Innovation Research Group Inc. and IPSOS Reid provide for the CEA being the sole owner of the CEA Survey Reports.

19. Second, there are CEA benchmarking reports about specific subjects that can only be created in an environment of confidentiality and trust (i.e. the 2011-2013 annual service continuity reports on distribution system performance and the information technology budget report) (collectively, the "CEA Benchmarking Reports"). The CEA Benchmarking Reports were designed with the substantial involvement of the CEA and consultation with CEA members. Notably, the annual service continuity reports on distribution system performance are versions of a report prepared by the CEA for nearly three decades.

20. The CEA Data Models were used extensively to prepare the CEA Benchmarking Reports. The CEA's employees are the authors of the CEA Data Models, which are original works owned by the CEA. In order to produce the CEA Benchmarking Reports, the 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 the CEA as part of its commercial endeavour. The CEA is continually adding value to the CEA Data Models through system upgrades and integrating additional research considered valuable to its members.

21. The 2011-2013 annual service continuity reports on distribution system performance were prepared by CEA employees and the reports are owned by the CEA.

22. With respect to the 2011-2013 annual service continuity reports on distribution system performance, the CEA spent approximately \$80,000 per year (in respect of internal fees and expenses, as these reports are entirely developed within the CEA). The CEA recoups these costs by selling the reports to its members and not through other means. For this reason it never consents to copies of the CEA Benchmarking Reports being made or provided without compensation.

23. The CEA creates composite versions of the CEA Benchmarking Reports, which are available for sale on its website to non-members. The CEA has previously advised the SEC of this fact. The reports for sale include non-confidential composite versions of service continuity reports. I am unaware why the SEC continues to pursue such reports through the Board process instead of simply buying from the website the composite service continuity reports that are

available. On January 14, 2015, Toronto Hydro provided the SEC with a list of the names of the CEA Reports that were the subject of the SEC Motion. At that time, SEC had available to it all the information required to know that three of the reports that it was seeking to access through the regulatory process were composite service continuity reports publicly available for sale on the CEA website. On January 19, 2015, the CEA's counsel asked counsel to the SEC whether there were any CEA Reports listed by Toronto Hydro that were no longer of interest to the SEC for the purposes of its motion, as it would be useful to focus the motion as much as possible. Surprisingly, in response, counsel to the SEC advised that it continued to seek disclosure of all of the reports listed by Toronto Hydro (rather than simply purchasing some of the reports online).

24. To be perfectly clear, the 2011, 2012 and 2013 service continuity composite reports are available to the SEC on-line for purchase. As yet there is no 2014 report.

25. Importantly, the 2013 CEA service continuity report listed by Toronto Hydro as being in its possession is a working draft and confidential (non-composite) version of the report used by the CEA committee members as a tool for developing the final report. The CEA has obtained from Toronto Hydro the draft 2013 document, reviewed it, and found that it contains materially inaccurate data that was changed in later drafts. As a result, this draft is unreliable and the better 2013 source is the final report sold on the CEA website.

26. The Gartner Report is an unusual benchmarking report for CEA. It was largely prepared by Gartner, Inc. and most of it is owned by Gartner. (Out of the report's 40 pages, 8 are owned by the CEA (the CEA provided the content) and the balance are owned by Gartner, Inc. pursuant to their agreement that the CEA owned what it supplied and Gartner, Inc. owned the rest). It was

intended to be used only by the CEA and its members and not for regulatory purposes. It was designed with the substantial involvement of the CEA and in consultation with CEA members.

27. The CEA has not consented to the reproduction by Toronto Hydro of any of the CEA Reports or Data Models, or otherwise licensed them, nor consented to the Board authorizing their reproduction. Moreover, the CEA has not authorized the disclosure by Toronto Hydro of the CEA Data Models or the CEA Reports to the SEC or any utility regulator in Canada. The CEA Property remains confidential.

28. The CEA has from time to time developed and published benchmarking information and reports for use by regulators, but only on being convinced that doing so is in the best interest of itself and its members, and only by deliberate design. No such information or reports form part of the CEA Property.

The CEA's Confidentiality Policies

29. The CEA's benchmarking activities are premised on each participating utility providing CEA Data about their operations to the CEA. All of these utilities have entrusted CEA with their confidential 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 "C"**; (b) the CEA Data Collection and Sharing Policy, attached hereto as **Exhibit "D"**; and (c) the CEA Policies for Benchmarking Data in Regulatory Settings, attached hereto as **Exhibit "E"**.

30. Page 2 of **Exhibit “C”** 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.”

31. Similarly, Section 2.1 of **Exhibit “D”** 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 “D”** 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”, that exception has never been applied.

32. Pursuant to Section 7.1 of **Exhibit “D”**, 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”. This provision relates to CEA members publicly comparing their owner numbers to the information in composite reports.

33. Recognizing that benchmarking data may be of assistance to utilities regulators, CEA has developed policies, as set out in **Exhibit “E”**, to enable its members to provide benchmarking data in regulatory settings in a manner that does not violate the CEA’s copyright, breach the confidentiality terms and conditions that bind CEA and its members, or harm the commercial interests and goodwill of the CEA. Policy 1 of **Exhibit “E”** 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 “E”** 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 “E”** 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 any CEA data model or report.

34. Further to this policy, the CEA has created benchmarking metrics for the use of regulators and its members have provided such metrics to regulators, for example, in respect of service continuity, members have provided their measures of System Average Interruption Duration Index (SAIDI) , System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) to regulators, along with national comparators.

The Impact of the Board Compelling the Reproduction and Disclosure of the CEA Reports

35. The CEA and its members adhere to all of the foregoing policies. Information from CEA members is strictly confidential and not otherwise available for release. Non-adherence by one member, whether on its own volition or by regulatory compulsion, would have a significant negative impact on the CEA, its members and the benchmarking program in Canada. For this reason, the consequences for non-adherence are severe. Policy 7 of **Exhibit “E”** 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.”

36. If Toronto Hydro is compelled to disclose the CEA Property or any part thereof (other than the 2012 and 2013 composite service continuity reports), Toronto Hydro will not be allowed to participate at all in future CEA benchmarking activities nor receive future versions of the CEA Reports. In addition, Toronto Hydro will no longer be entitled to receive future information from the CEA about other Canadian utilities’ benchmarking metrics and data. This bar on Toronto Hydro’s participation in confidential CEA activities may be extended to all Ontario entities (there has not been time since the SEC Motion arose to fully consider this possibility, which the CEA reserves the right to do).

37. It took the CEA many years to build trust among its members sufficient for them to share confidential information with the CEA and each other. The trust placed in the disclosing members 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. 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, disclosure of the CEA Property will cause irreparable commercial harm to the CEA. Utilities will be much less likely to participate in CEA studies if the confidential outputs are subject to regulatory disclosure.

38. Also, compelled disclosure of the confidential CEA Property means that the SEC would be unfairly appropriating and gaining from the intellectual property investments made by the CEA, with no benefit conferred on CEA. Without intellectual property rights to prevent others from copying or unfairly gaining from its creativity, work product and investment, the CEA would have little incentive to continue its benchmarking program and without CEA benchmarking, CEA members would be unable to consult with, improve and learn from the best performing utilities as they have for nearly 30 years.

39. Without the participation of a broad range of utilities, the analytical work that the CEA undertakes becomes less valuable to users. This will result in diminished revenues for the 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, causing significant prejudice to the CEA's economic and public policy interests.

40. Such a result would not 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 January 21st, 2015
A Commissioner for taking affidavits

M. Shneer
Michel Shneer

F. Bradley
Francis Bradley

1

SCHEDULE “1”

CEA Corporate Utility Members

- AltaLink
- ATCO Electric
- ATCO Power
- BC Hydro and Power Authority
- Brookfield Renewable Energy Group
- Capital Power Corporation
- City of Medicine Hat, Electric Utility
- Columbia Power Corporation
- Emera Inc.
- ENMAX Corporation
- EPCOR Utilities Inc.
- FortisAlberta Inc.
- FortisBC Inc.
- Horizon Utilities Corporation
- Hydro One Inc.
- Hydro Ottawa
- Manitoba Hydro
- Maritime Electric Company, Limited
- Nalcor Energy
- New Brunswick Power Holding Corporation
- Newfoundland Power Inc.
- Northwest Territories Power Corporation
- Nova Scotia Power Inc.
- Oakville Hydro Corporation
- Ontario Power Generation Inc.
- PowerStream Inc.
- Saint John Energy
- Saskatoon Light & Power
- SaskPower
- Toronto Hydro Corporation
- TransCanada
- Yukon Energy Corporation

Associate CEA Members

- Bermuda Electric Light Company Limited
- Caribbean Electric Utility Services Corporation (CARILEC)
- Caribbean Utilities Company, Ltd.
- City of Lethbridge

- City of New Westminster
- City of Penticton
- City of Red Deer Electric Light and Power
- City of Swift Current Light & Power
- CSA Group
- EQUUS REA Ltd.
- Hammond Power Solutions
- KEMA Consulting Canada Limited
- Orillia Power Corporation
- St. Thomas Energy Inc.
- Stantec Consulting

CEA Corporate Partner Members

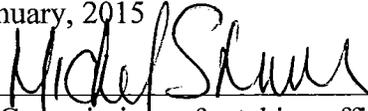
- ABB Inc.
- Alberta Electric System Operator
- Algonquin Power and Utility Corp.
- Allteck Line Contractors Inc.
- Alstom Grid Canada
- Altus Group Limited
- Amec Foster Wheeler
- Andritz Hydro Canada Inc.
- Aon Reed Stenhouse Inc.
- Babcock & Wilcox Power Generation Group Canada Corp.
- Bennett Jones LLP
- Burns & McDonnell
- Cam Tran Co. Ltd.
- Capgemini Canada Inc.
- Cogent Power Inc.
- Deloitte
- Elster Solutions
- EnerNOC
- Ericsson Canada Inc
- Ernst & Young LLP
- ESRI Canada
- GE Canada
- GeoDigital International Inc.
- Golder Associates Ltd.
- Hatch Ltd.
- Hubbell Power Systems Inc.
- IBM Canada Ltd.
- Independent Electricity System Operator (IESO)
- Itron, Inc.

- KPMG LLP
- Landis+Gyr
- LOCWELD Inc.
- Mitsubishi Hitachi Power Systems Canada Ltd.
- MNP LLP
- Morgan Schaffer Inc.
- Navigant
- Ontario Power Authority
- Optima Communications International Inc
- Oracle Corporation
- Partner Technologies Incorporated
- PowerPlan, Inc.
- PwC
- Prysmian Cables and Systems Canada Ltd.
- Renewable Energy Systems Canada Inc.
- SAP
- SAS Institute (Canada) Inc.
- S&C Electric Canada Ltd.
- Schneider Electric Canada Inc.
- Sensus Metering Systems Inc.
- Shell Energy North America
- Siemens Transformers Canada Inc.
- SNC-Lavalin Inc.
- Southwire Canada
- STARK International
- Stella-Jones Inc.
- Thomas & Betts Limited

A

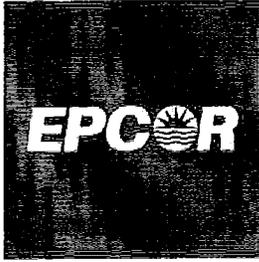
EXHIBIT A
Letters from CEA Utility Members

This is Exhibit "A" referred to in the affidavit of
Francis Bradley sworn before me this 21st day of
January, 2015



A Commissioner for taking affidavits

Michel Sinner



2000 – 10423 101 St NW, Edmonton, AB
T5H 0E8 Canada
epcor.com

January 16, 2015

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

**Attention: Kirsten Walli,
Board Secretary**

Dear Ms. Walli:

Re: Canadian Electricity Association Submission to the Ontario Energy Board

1. EPCOR Distribution & Transmission Inc. (EDTI) is writing to support the Canadian Electricity Association (CEA) submission to the Ontario Energy Board (OEB), requesting that the OEB deny the School Energy Coalition's (SEC's) Motion requesting that the OEB order Oakville Hydro Electricity Distribution Inc. to provide full and adequate response to Interrogatory 2.1-SEC-3 by producing copies of two [CEA] surveys/studies.
2. EDTI is an active member of the CEA and voluntarily participates in benchmark studies conducted by that organization.
3. As commonly acknowledged among utilities and regulators alike, "benchmarking" is a difficult and inherently imprecise exercise, given fundamental differences in the circumstances of each utility that drive performance and costs, including such things as climate, geography, age and type of facilities comprising the utility as well as system design, maintenance practices, historical investment levels and life cycle replacement cycles. EDTI uses the CEA aggregated benchmarking statistics as high level, directional indicators of performance, to assist EDTI in identifying aspects of its operations that might warrant further investigation from a performance perspective. However, given the fundamental differences among utilities, EDTI does not (and could not on any reasonable basis) use the benchmarking information as a tool by which to accurately measure its performance in a specific area.
4. With all of this in mind, EDTI provides its company-specific data to the CEA for benchmarking purposes on a confidential basis, on the condition that it will be aggregated with the data provided by other member utilities and only released publicly on such aggregated basis. The public release of the company-specific data provided to the CEA would in all likelihood significantly increase the

administrative and regulatory burden for member utilities such as EDTI. Specifically, the utilities could easily find themselves being forced to spend excessive amounts of time and resources in the regulatory process addressing specific data points that are fundamentally not comparable among different utilities. The very real potential for this outcome would create a strong incentive for member utilities such as EDTI to withdraw their participation from the CEA benchmarking process, taking away any benefits that CEA benchmarking currently provides to Canadian utilities and their customers.

5. EDTI submits that the CEA, by virtue of its membership, reputation in the electricity industry and expertise, is in a unique position to be able to undertake benchmarking studies for the electricity industry. EDTI is willing to work with the CEA to attempt to develop an acceptable approach to providing regulatory benchmarking data.

6. For these reasons, EDTI supports the CEA's position that the SEC motion be denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jay Baraniecki', with a long horizontal line extending to the right.

Jay Baraniecki
Director, Regulatory Affairs
EPCOR Distribution & Transmission Inc.



FOR GENERATIONS

Janet Fraser

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

bchydroregulatorygroup@bchydro.com

Via email: bradley@electricity.ca

January 20, 2015

Canadian Electrical Association
#1500 - 275 Slater Street
Ottawa, Ontario K1P 5H9

Attention: Francis Bradley

Dear Mr. Bradley:

**RE: School Energy Coalition (SEC) Motion before the Ontario Energy Board (OEB)
for an Order Requiring Toronto Hydro-System Electric Limited to Provide
Canadian Electrical Association (CEA) Confidential Benchmarking Information**

BC Hydro has reviewed the CEA's comments regarding the above-noted matter before the OEB in relation to the SEC's motion to compel the disclosure of certain CEA data and reports that includes information and data provided by BC Hydro to the CEA on a confidential basis. BC Hydro does not consent to the disclosure of its confidential information and data, and strongly supports the CEA's submission for the denial of the SEC motion.

BC Hydro, as a member of the CEA, participates in CEA studies and surveys with the understanding that non-public data and information provided by BC Hydro to the CEA will be treated by the CEA, and other members, as sensitive confidential information not to be shared with, or disclosed to, other third parties. Should the OEB make an order requiring Toronto Hydro to provide the CEA confidential benchmarking information, BC Hydro will need to re-evaluate its participation in such future studies and surveys.

For further information, please contact the undersigned.

Yours sincerely,

Original signed

Janet Fraser

Chief Regulatory Officer

gd/ma



2025 Victoria Avenue
Regina, Saskatchewan S4P 0S1
(306)566-3139

January 20, 2015

Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario
K1P 5H9

Attention: Francis Bradley

Re: School Energy Coalition (SEC) motion before the Ontario Energy Board (OEB)
and Canadian Electricity Association (CEA) Notice of Constitutional Question

Dear Sirs:

SaskPower has reviewed the SEC motion before the OEB for an order requiring Toronto Hydro to provide confidential Canadian Electricity Association (CEA) benchmarking data and analysis. As a member of the CEA, SaskPower supports the position of the CEA requesting denial of the SEC motion.

SaskPower participates in CEA-related benchmarking and analysis on the express understanding that any associated data that our company provides will not be disclosed to parties external to the CEA. One of our chief concerns is that if that information would be released, invalid utility comparisons could be made without taking into consideration a variety of significant variables, among them: service areas, fuel sources and population served. As a result, SaskPower agrees with the position set out in the CEA's submission to the OEB. If the SEC motion is granted, then SaskPower's future participation in CEA benchmarking studies would be in question.

We believe that only a trusted industry membership organization like the CEA can act as the creator of benchmarking studies in the Canadian electricity industry. If SaskPower and other member utilities end their participation it will negatively affect performance improvement and the ongoing pursuit of economic efficiencies throughout Canada's electricity industry.

SaskPower is certainly willing to work through the CEA and with the OEB and other Canadian Utility regulators to develop a mutually acceptable approach for providing regulators with benchmarking data. Should you have any questions, please don't hesitate to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rachelle Verret Morphy', written over a horizontal line.

Rachelle Verret Morphy
Vice-President, Law, Land and Regulatory Affairs

cc Mike Marsh, Acting President & CEO, SaskPower



January 19, 2015

Via Email

Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario K1P 5H9

ATTN: Anne-Marie Battis, Program Officer

**RE: OEB Hearing EB-2014-0116
Motion Compelling Toronto Hydro-Electric System Limited (THESL) to Provide Confidential CEA
Benchmarking Data**

Dear Ms. Battis:

ATCO Electric Distribution Division is aware that THESL is currently before the Ontario Energy Board (OEB) in Proceeding EB-2014-0116. As part of this proceeding, ATCO Electric understands the School Energy Coalition (SEC) has asked the OEB to compel disclosure of CEA-copyrighted material including confidential and proprietary benchmarking study results. This material includes confidential and proprietary ATCO Electric data submissions that were provided to the CEA for use in its CEA's proprietary benchmarking studies. This data was provided by ATCO Electric on the basis that it would be maintained in accordance with strict confidentiality requirements.

ATCO Electric supports CEA's position that this confidential and proprietary information should not be disclosed in Proceeding EB-2014-0116. As a regulated electric distribution utility in the Province of Alberta, and a long-time contributor of confidential and proprietary data to CEA benchmarking studies, ATCO Electric submits disclosure of this information without its approval or involvement is simply wrong and would impact the sharing of confidential and proprietary benchmark information going forward.

Further to the above, should the SEC be successful in seeking the release of CEA's confidential and proprietary information, it would have a significant impact on information sharing for the purpose of improving performance in broad range of activities – well beyond reliability statistics. Only a trusted organization such as CEA can effectively act as the creator and custodian of benchmarking studies in the electricity industry. If the CEA benchmarking reports or data are disclosed without the consent of the CEA and the participating member utilities, whether in the context of an OEB confidentiality undertaking or not, ATCO Electric will need to consider further participation in benchmarking activities to which Ontario utilities have access. The ability of the CEA to provide benchmarking programs that add value the electric distribution industry would be significantly impaired if utilities are unwilling to participate due to breaches of confidentiality.

ATCO Electric's Distribution Division, through CEA, encourages the OEB and other stakeholders to cooperatively develop a mutually acceptable approach to providing benchmarking data that does not result in disclosure of utility specific confidential and proprietary information.

Yours Truly,

A handwritten signature in black ink, appearing to be "Barry Goy", written over a horizontal line.

Barry Goy, P. Eng.
Vice President, Distribution Operations
ATCO Electric Ltd., Distribution Division
T 780-420-3987

ATCO Electric Ltd.
10035 - 105 Street, Edmonton, Alberta, Canada T5J 2V6
Tel: 780-420-7310 Fax: 780-420-7400
www.atcoelectric.com



Énergie NB Power

January 19, 2015

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

Dear Ms. Walli:

Re: Board File No. EB-2014-0116

This letter is in regard to a matter before the Ontario Energy Board involving an application (EB-2014-0116) by Toronto Hydro-Electric System Limited ("Toronto Hydro") for an Order or Orders approving or fixing just and reasonable rates and other service charges for the distribution of electricity as of May 1, 2015.

The Intervenor, Canadian Electricity Association ("CEA"), intends to question the constitutional validity of the Ontario Energy Board (the "Board") compelling disclosure, and therefore reproduction, of documents owned by a third party pursuant to provincial legislation, namely section 21(1) of the *Ontario Energy Board Act, 1998, S.O. 1998*.

As part of the hearing process, the School Energy Coalition ("SEC") has filed a motion seeking the relief pursuant to Rule 27.03 of the Board's Rules of Practice and Procedure (the "Rules") including (a) An order requiring Toronto Hydro to provide a full and adequate response to interrogatory 1B-SEC-8, specifically to produce benchmarking documents with respect to which Toronto Hydro has participated through the CEA.

The documents requested are those conducted by the Canadian Electricity Association ("CEA") to which the New Brunswick Power Corporation ("NB Power") is a long standing member.

NB Power objects to the disclosure of any survey/study conducted by CEA for two reasons:

- a) any disclosure of surveys/studies, which are classified as confidential by CEA, would violate the understanding and promise of confidentiality under which NB Power had agreed to share information; and
- b) the release of such surveys/studies may set precedence in future hearings in Ontario and across Canada and therefore bring to a stop all sharing of industry related information in the fear of more disclosures.

...2/

NB Power strongly supports the role of the CEA and the benefits that are derived as a result of a national forum and voice for the electricity industry in Canada. The release of confidential information can have many repercussions that are detrimental to the utility and customers. The loss of a confidential forum such as the CEA would be a set-back to the electricity industry in terms of potential progress in establishing best practices, innovative customer service, and the ability to deliver electricity at low and stable rates. NB Power is a corporation of the Crown and the standard service provider for electricity in New Brunswick so we rely on cost effective measures, such as our involvement with CEA, as an avenue to ensure we provide a reliable supply of electricity at the best cost.

NB Power is in support of the CEA's position taken in the Toronto Hydro rates proceeding to oppose the Order requested by the SEC with respect to the production of benchmarking documents of which Toronto Hydro has participated through the CEA.

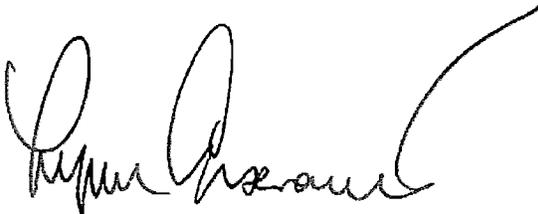
Sincerely,



Tony O'Hara
Chief Technology Officer and Vice President of Engineering
NB Power Corporation

CEA Transmission Council Representative

- AND -



Lynn Arsenault
Vice President of Customer Service
NB Power Corporation

CEA Distribution Council Representative



ENMAX Power Corporation
141 – 50 Avenue SE
Calgary, AB T2G 4S7
Tel (403) 514-3000
enmax.com

January 16, 2015

- via Electronic Filing -

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

**Attention: Kirsten Walli
Board Secretary**

Dear Ms. Walli:

RE: Notice of Constitutional Question (Board File EB-2014-0116)

ENMAX Power Corporation ("EPC") owns, operates and maintains the electric Distribution and Transmission Systems located in the City of Calgary. EPC is aware of the proceeding before the Ontario Energy Board ("OEB") where the Canadian Electricity Association ("CEA") intends to question the constitutional validity of the OEB compelling disclosure, reproduction of documents owned by a third party, where the third party copyright owner of the documents has not granted consent. A Notice of Constitutional Question was filed by the CEA on January 14, 2015.

EPC supports the CEA motion. EPC participates in CEA's surveys and/or benchmarking studies and relies on the surveys and/or benchmarking studies to improve practices and share information. EPC exchanges data with other CEA members to identify opportunities for process improvement. If the CEA reports or benchmarking data are disclosed to anyone without the consent of the CEA, EPC will have to reconsider its participation in future CEA's surveys and/or benchmarking studies.

EPC enjoys its working relationship with the CEA and is willing to work with the OEB, through the CEA, to develop an acceptable approach to providing regulatory benchmarking data.

Sincerely,

**Kurtis Hildebrandt
Director, Regulatory Affairs**

cc: Interested Parties



January 16, 2015

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli,

Re: Toronto Hydro-Electric System Limited (EB-2014-0116)

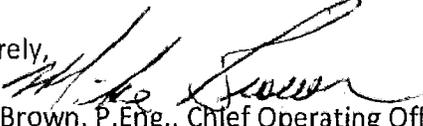
Oakville Hydro Electricity Distribution Inc. (Oakville Hydro) is the electricity distributor serving the Town of Oakville. The purpose of this letter is to express Oakville Hydro's views with respect to the Notice of Constitutional Question submitted by the Canadian Electricity Association (CEA) in the above noted proceeding.

In 2014, the CEA submitted a similar Notice of Constitutional Question in Oakville Hydro's 2014 Cost of Service (EB-2013-0159) proceeding in response to the School Energy Coalition's (SEC's) request for the disclosure of a benchmarking survey conducted by the CEA. In Oakville Hydro's proceeding, (SEC) withdrew its request for disclosure of the benchmarking report.

Oakville Hydro is a member of the CEA and utilizes benchmarking information from the Association as well as other sources in order to assist in the identification of opportunities to improve business processes and efficiencies that ultimately benefit its customers. Oakville Hydro would be concerned that if a decision is made to compel the disclosure of this confidential CEA information. It would have to re-evaluate its participation in any future benchmarking studies. It also believes that other utilities will be reluctant to participate in benchmarking studies knowing that there is a high probability that confidential data will become public by means of the Ontario Energy Board.

Therefore Oakville Hydro fully supports the CEA's position in this proceeding.

Sincerely,


Mike Brown, P.Eng., Chief Operating Officer,
Oakville Hydro Electricity Distribution Inc.

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

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli,

St. Lucia Electricity Services Ltd understands that the School Energy Coalition ("SEC") has asked that the Ontario Energy Board compel disclosure of copyright Canadian Electricity Association ("CEA") materials within Toronto Hydro-Electric System Limited's ("Toronto Hydro") current rate case proceeding. St. Lucia Electricity Services Ltd supports the CEA in their filed motion regarding the release of copyrighted material, as St. Lucia Electricity Services Ltd has contributed to the copyright material with the agreement that the information was strictly confidential and shared with other participants for their internal use only. St. Lucia Electricity Services Ltd has been participating with the CEA in sharing data to help with fault analysis and other studies to aid in our development as a power distributor.

Only a trusted organization such as CEA can act as the creator of benchmarking studies in the electricity industry. Members choose to participate in these benchmarking and data comparison initiatives under the clear agreement of confidentiality. It is through the participation and sharing of information that members seek to find opportunities to enhance their performance, to the benefit of customers and ratepayers. If CEA benchmarking reports or data are disclosed to anyone without the consent of the CEA, whether in the context of an OEB confidentiality undertaking or not, St. Lucia Electricity Services Ltd will be forced to no longer participate in benchmarking activities to which Ontario utilities have access.

We are concerned about the potential loss of this industry opportunity for improvement and the potential disclosure of confidential information. St. Lucia Electricity Services Ltd through CEA, is willing to work with the OEB and other regulators to develop a mutually acceptable approach to providing regulatory benchmarking data.

Sincerely,

Germaine Andrew
Technical Clerk
St. Lucia Electricity Services Ltd

B

EXHIBIT B
Letters from CEA Utility Members in respect of EB-2013-0159

This is Exhibit "B" referred to in the affidavit of
Francis Bradley sworn before me this 21st day of
January, 2015



A Commissioner for taking affidavits



March 20, 2014

Mr. Jim Burpee
President and Chief Executive Officer
CANADIAN ELECTRICITY ASSOCIATION
275 Slater Street, Suite 1500
Ottawa, Ontario
K1P 5H9

Direction – Encadrement réseau et
planification
Vice-présidence – Réseau de distribution
Hydro-Québec Distribution
Complexe Desjardins, Tour Est – 13^e étage
C.P. 10000, Succ. Pl.-Desjardins
Montréal (Québec) H5B 1H7

Tél. : 514 879-4100, poste 3662
Télec. : 514 879-4870
Courriel : chartrand.denis.2@hydro.qc.ca

Subject: Protection of Confidentiality of Benchmarking Information from Hydro-Québec Distribution and produced with the CEA
File: *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.*
Docket: EB-2013-0159

Mr. Burpee,

It has been brought to our attention that an intervener in the above mentioned Ontario Energy Board (OEB) file - the School Energy Coalition (SEC) – has asked the OEB to compel disclosure of Canadian Electricity Association (CEA) benchmarking analysis including confidential information provided by Hydro-Québec Distribution to CEA.

All CEA Benchmarking participants have established and abided by confidentiality rules, which have been managed by CEA. Under these rules, all data that are provided by Hydro-Québec Distribution to CEA are confidential. So are the Benchmarking Reports that follow.

All data that are given to CEA by Hydro-Québec Distribution and shared within all benchmarking participants are for their own internal use only. Therefore, all external use of Hydro-Québec Distribution data or other participants' data is strictly forbidden unless these members give their explicit agreement.

Hydro-Québec Distribution does not grant its agreement for making its data available in and reminds CEA that it provided this data under a strict confidentiality agreement.

Should the OEB grant the SEC's motion in this case, Hydro-Québec Distribution would reconsider its participation to CEA programs or benchmarking studies. Thus, if Hydro-Québec Distribution and other participants no longer participates in CEA benchmarking studies, it would have a significant impact on information sharing for the purpose of improving performance in broad range of activities – well beyond our reliability statistics to information shared through CEA's best practice work, the simple surveys and quick polls we undertake and even public attitudes research.

Hydro-Québec Distribution participated in CEA programs and benchmarking studies with the understanding and the expectation that these confidentiality rules would be guaranteed. Therefore, Hydro-Québec Distribution requests that CEA takes all means available to protect the confidentiality of Hydro-Québec Distribution information's and the Benchmarking data. Specifically, we ask you to make legal representations before the OEB and confirm to us that you will be taking the required actions to preserve the confidentiality of Hydro-Québec Distribution information's and the benchmarking data.

Best regards,



Denis Chartrand, ing.
Chef - Stratégie et encadrement du réseau

2014 03 20

Mr. Francis Bradley
Vice President Policy
Canadian Electric Association
275 Slater Street
Ottawa ON K1P 5H9

Dear Mr. Bradley:

SEC MOTION FOR INFORMATION DISCLOSURE TO THE OEB

Manitoba Hydro, as a participant in the CEA's Public Attitude Research and Benchmarking Studies, strongly objects to public disclosure of the requested CEA Benchmarking information. Manitoba Hydro assigns significant value to the information gathered by the CEA as it is representative of the utility industry and provides an opportunity to benchmark our performance against those of our peers.

If this information were to become part of the public domain, utilities may be hesitant to participate in future benchmarking studies. Without adequate representation from the utility industry, the validity of future benchmarking studies is called into question and may result in the loss of valuable information for our utility.

We fully support the CEA's position to have this motion dismissed as it is not in the public interest.

Yours truly,



Vice-President Customer Care & Energy Conservation

LJK/nkw



Énergie NB Power

March 20, 2014

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

Dear Ms. Walli:

Re: Board File No. EB-2013-0159

This letter is in regard to a matter before the Ontario Energy Board involving an application (EB-2013-0159) by Oakville Hydro Electricity Distribution Inc. for an Order or Orders approving just and reasonable electricity rates and other charges for electricity distribution to be effective May 1, 2014.

As part of the hearing process, the School Energy Coalition ("SEC") has filed a motion asking that Oakville Hydro include copies of two surveys/studies in its response to Interrogatory 2.1-SEC-3. The surveys/studies requested are those conducted by the Canadian Electricity Association ("CEA") to which the New Brunswick Power Corporation ("NB Power") is a long standing member.

NB Power objects to the disclosure of any survey/study conducted by CEA for two reasons;

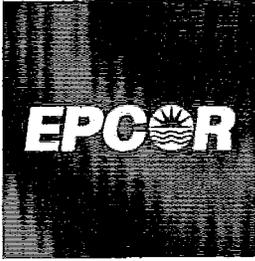
- a) any disclosure of surveys/studies, which are classified as confidential by CEA, would violate the understanding and promise of confidentiality under which NB Power had agreed to share information; and
- b) the release of such surveys/studies may set precedence in future hearings in Ontario and across Canada and therefore bring to a stop all sharing of industry related information in the fear of more disclosures.

NB Power strongly supports the role of the CEA and the benefits that are derived as a result of a national forum and voice for the electricity industry in Canada. The release of confidential information can have many repercussions that are detrimental to the utility and customers. The loss of a confidential forum such as the CEA would be a set-back to the electricity industry in terms of potential progress in establishing best practices, innovative customer service, and the ability to deliver electricity at low and stable rates. NB Power is a corporation of the Crown and the standard service provider for electricity in New Brunswick so we rely on cost effective measures, such as our involvement with CEA, as an avenue to ensure we provide a reliable supply of electricity at the best cost.

We support the CEA's motion to not allow the release of the requested surveys/studies as requested in the SEC motion.

Sincerely,

Sherry Thomson
Vice President of Customer Service, Transmission and Distribution
NB Power Corporation



2000 – 10423 101 St NW, Edmonton, AB
T5H 0E8 Canada
epcor.com

March 20, 2014

Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario K1P 5H9

Attention: Devin McCarthy
Director, Transmission & Distribution
Canadian Electricity Association

Dear Mr. McCarthy:

Re: EPCOR Distribution & Transmission Inc.
Canadian Electricity Association Submission to the Ontario Energy Board

EPCOR Distribution & Transmission Inc. (EDTI) is writing to support the Canadian Electricity Association (CEA) submission to the Ontario Energy Board (OEB), requesting that the OEB deny the School Energy Coalition's (SEC's) Motion requesting that the OEB order Oakville Hydro Electricity Distribution Inc. to provide full and adequate response to Interrogatory 2.1-SEC-3 by producing copies of two [CEA] surveys/studies.

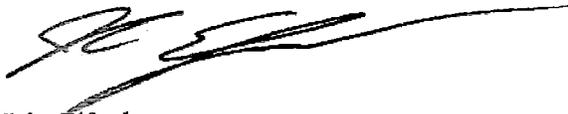
EDTI is an active member of the CEA and voluntarily participates in benchmark studies conducted by that organization.

As commonly acknowledged among utilities and regulators alike, "benchmarking" is a difficult and inherently imprecise exercise, given fundamental differences in the circumstances of each utility that drive performance and costs, including such things as climate, geography, age and type of facilities comprising the utility as well as system design, maintenance practices, historical investment levels and life cycle replacement cycles. EDTI uses the CEA aggregated benchmarking statistics as high level, directional indicators of performance, to assist EDTI in identifying aspects of its operations that might warrant further investigation from a performance perspective. However, given the fundamental differences among utilities, EDTI does not (and could not on any reasonable basis) use the benchmarking information as a tool by which to accurately measure its performance in a specific area.

With all of this in mind, EDTI provides its company-specific data to the CEA for benchmarking purposes on a confidential basis, on the condition that it will be aggregated with the data provided by other member utilities and only released publicly on such aggregated basis. The public release of the company-specific data provided to the CEA would in all likelihood significantly increase the administrative and regulatory burden for member utilities such as EDTI. Specifically, the utilities could easily find themselves being forced to spend excessive amounts of time and resources in the regulatory process addressing specific data points that are fundamentally not comparable among different utilities. The very real potential for this outcome would create a strong incentive for member utilities such as EDTI to withdraw their participation from the CEA benchmarking process, taking away any benefits that CEA benchmarking currently provides to Canadian utilities and their customers.

For these reasons, EDTI supports the CEA's request that the SEC motion be denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Elford', with a long horizontal flourish extending to the right.

John Elford
DVP, D&T Operations
EPCOR Distribution & Transmission Inc.

cc: Jay Baraniecki, EPCOR Distribution & Transmission Inc.
Jonathan M. Liteplo, Fasken Martineau DuMoulin LLP



March 17, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**RE: EB-2013-0159 Oakville Hydro
School Energy Coalition (SEC) motion before the Ontario Energy Board (OEB) for an
order requiring Oakville Hydro Electricity Distribution Inc. (Oakville Hydro) to provide
confidential benchmarking analysis of the Canadian Electricity Association (CEA)**

AltaLink Management Ltd. (AltaLink), a regulated transmission owner in Alberta, has been informed of the SEC's motion before the OEB for an order requiring Oakville Hydro to provide confidential benchmarking analysis of the CEA. In response to this motion, the CEA has been granted intervener status and has prepared a submission to which this letter is also attached. AltaLink has reviewed the CEA's submission to the OEB on this matter and fully supports the CEA's request that the SEC motion, to the extent it forces disclosure of confidential benchmarking data provided to the CEA by AltaLink, be denied.

The SEC motion requires Oakville Hydro to violate the binding confidentiality agreement all participating CEA members have in relation to participating in the provision of confidential benchmarking data. No member has the authority to release to any non-participating party any information or results associated with any other individual participating member. The importance of this confidential obligation cannot be understated.

AltaLink brings to the OEB's attention a similar circumstance in Alberta where the Alberta Energy and Utilities Board (AEUB) requested and directed AltaLink to potentially breach CEA confidentiality provisions. In the AEUB's decision, *Decision 2007-012, page 107 to 108*, the AEUB respected the confidentiality provisions of AltaLink to the CEA and participating members.

AltaLink participates in the CEA benchmarking studies with the strict understanding and knowledge that any benchmarking data and information provided will not be disclosed to external parties and agrees with Item 6 of the CEA's submission that if this benchmarking information were so disclosed it would act as a strong disincentive for AltaLink to continue to participate in such surveys going forward. It is through the participation and sharing of such information that members seek to find opportunities to enhance their performance, to the benefit of customers and ratepayers.



2611- 3rd Avenue SE, Calgary, Alberta T2A 7W7 | www.altalink.ca

Should you have any questions please contact the undersigned regarding this matter at (403) 267-3411 or by email at dennis.frehlich@altalink.ca.

Respectfully,

A handwritten signature in black ink, appearing to read "Dennis Frehlich".

Dennis Frehlich, P.Eng.

Executive Vice President & Chief Operating Officer

cc Jim Burpee, President & CEO, Canadian Electricity Association
Mary Caputi, Director of Regulatory Affairs, Oakville Hydro
Scott Thon, President & Chief Executive Officer, AltaLink
Zora Lazic, Senior Vice President, Law, Regulatory & General Counsel, AltaLink

Brookfield

Brookfield Renewable Energy Group
480 de la Cité Blvd
Gatineau, Québec J8T 8R3

Tel 819.561.2722
Fax 819.561.7188
www.brookfieldrenewable.com

March 19, 2014

Francis Bradley
Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario K1P 5H9

Re: EB-2013-0159 – Application of Oakville Hydro Electricity Distribution Inc.,

Dear Mr. Bradley:

It has come to my attention that in the above-captioned case, intervenor the School Energy Coalition (the "SEC") has moved that the Ontario Energy Board compel the disclosure of confidential "details and copies of all performance efficiency benchmarking" in which the Applicant has participated. Such confidential "details and copies" appear to include information that CEA members, such as Brookfield Renewable Energy Group ("Brookfield"), has provided to the CEA on a confidential basis in order to support CEA's benchmarking efforts. I understand that the CEA is appearing before the OEB to oppose the SEC's request.

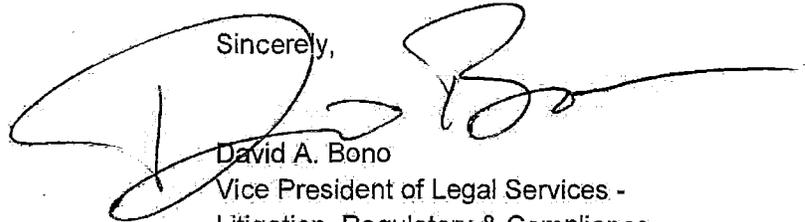
I am writing to support the CEA's efforts to oppose the SEC motion and protect confidential CEA benchmarking details from public disclosure. Brookfield's participation in the CEA's benchmarking efforts, and that of other electric industry companies, has been premised on the explicit understanding that their information would remain confidential. If that confidentiality was not given effect, but instead disclosure to third parties was compelled, the results could be deleterious.

Companies provide data about their own operations premised on the basis that the information will not be shared with anyone except the participating companies themselves (and, even then, behind a masked identification system that protects the identity of the participating company). As a consequence, weakened confidentiality could lead to decisions not to continue participation in future benchmarking.

Lessened industry participation, in turn, would undermine the benefits of benchmarking. Benchmarking against a full range of electric industry companies uncovers opportunities for enhanced performance, to the benefit of customers and ratepayers. That benefit erodes, however, as industry participation declines.

Brookfield therefore supports the CEA's efforts towards maintaining both the confidentiality that attends the benchmarking process and the value that confidential process brings to the customers and ratepayers of Ontario and, indeed, all of Canada.

Sincerely,

A handwritten signature in black ink, appearing to read 'David A. Bono', with a long horizontal flourish extending to the right.

David A. Bono
Vice President of Legal Services -
Litigation, Regulatory & Compliance
Brookfield Renewable Energy Group



March 24, 2014

Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario K1P 5H9

Dear Sir:

**Re: Disclosure of Confidential Canadian Electric Association (CEA)
Survey / Studies**

Thank you for your recent correspondence relating to Oakville Hydro Electricity Distribution Inc.'s rate application and a motion from the School Energy Coalition seeking an order from the Ontario Energy Board to compel Oakville Hydro to disclose confidential surveys/studies prepared by the CEA.

As a member of the CEA who has previously provided confidential data for various CEA surveys and studies, ATCO Electric respectfully submits this data was provided on the basis that it would be maintained in accordance with strict confidentiality requirements. These confidentiality requirements have and continue to be extremely important to ATCO Electric. If this expectation of confidentiality was breached, it is expected that ATCO Electric would reconsider its participation in future similar initiatives. This would be unfortunate as it is through this participation and sharing of information that ATCO Electric finds opportunities to enhance its performance to the benefit of its ratepayers as well as its shareowner.

Should have any questions on the above, please do not hesitate to contact me.

Yours truly,

A handwritten signature in black ink, appearing to read "James Grattan".

James Grattan, CA
Director, Regulatory
ATCO Electric Distribution Division



ENMAX Corporation
141 - 50 Avenue SE
Calgary AB T2G 4S7
Canada
enmax.com

March 17, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON
M4P 1E4

Robert N. Hemstock
*Executive Vice-President
Regulatory and Legal Services*
Tel (403) 514-1395
Fax (403) 514-2068
rhemstock@enmax.com

Dear Ms. Walli:

Re: EB-2013-0159 Oakville Hydro

ENMAX Corporation (ENMAX) is a vertically integrated utility operating within the province of Alberta. ENMAX has learned that the School Energy Coalition ("SEC") has brought a motion in the above-referenced proceeding asking the Ontario Energy Board ("Board") for an order requiring Oakville Hydro to provide two surveys/studies, the provision of which would disclose confidential benchmarking data provided to the Canadian Electricity Association ("CEA") by its members.

ENMAX is not a party in this proceeding, nor is it seeking standing before the Board; however, ENMAX is compelled to write to the Board since a decision to order the production of the two surveys/studies requested by the SEC would result in the release of ENMAX information. As part of its participation in the CEA benchmarking surveys, ENMAX provides the CEA with sensitive confidential information regarding its performance. ENMAX provides this information in order to assist in the identification of opportunities to improve economic efficiencies and reduce costs in the provision of utility services and products for the benefit of its customers. ENMAX has always understood that the data will, at all times, be held in the strictest confidence. Indeed, ENMAX, as do all participating members, signs a binding confidentiality agreement to this effect.

Should the Board make the order requested by the SEC, ENMAX would be forced to re-evaluate its participation in the benchmarking studies. Should the benchmarking studies no longer be undertaken, ENMAX respectfully submits that it would be to the detriment of the customers served by the participating members. Accordingly, ENMAX strongly opposes the issuance of the requested order.

Sincerely,

Robert N. Hemstock
Executive Vice-President
Regulatory and Legal Services
ENMAX Corporation

Cc: Jim Burpee, President and CEO, Canadian Electricity Association



FOR GENERATIONS

Janet Fraser

Chief Regulatory Officer

Phone: 604-623-4046

Fax: 604-623-4407

bchydroregulatorygroup@bchydro.com

Via email: bradley@electricity.ca

March 20, 2014

Canadian Electrical Association

#1500 - 275 Slater Street

Ottawa, Ontario K1P 5H9

Attention: Francis Bradley

Dear Mr. Bradley:

RE: School Energy Coalition (SEC) Motion before the Ontario Energy Board (OEB) for an Order Requiring Oakville Hydro to Provide Canadian Electrical Association (CEA) Confidential Benchmarking Information

BC Hydro has reviewed the CEA's comments regarding the above-noted matter before the OEB in relation to the SEC's motion to compel the disclosure of certain CEA data and reports that includes information and data provided by BC Hydro to the CEA on a confidential basis. BC Hydro does not consent to the disclosure of its confidential information and data, and strongly supports the CEA's submission for the denial of the SEC motion.

BC Hydro, as a member of the CEA, participates in CEA studies and surveys with the understanding that non-public data and information provided by BC Hydro to the CEA will be treated by the CEA, and other members, as sensitive confidential information not to be shared with, or disclosed to, other third parties. Should the OEB make an order requiring Oakville Hydro to provide the CEA confidential benchmarking information, BC Hydro will need to re-evaluate its participation in such future studies and surveys.

For further information, please contact the undersigned.

Yours sincerely,

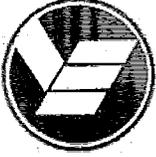
A handwritten signature in black ink, appearing to read "Janet Fraser", written over a large, stylized, light-colored scribble or watermark.

Janet Fraser

Chief Regulatory Officer

jf/ma

YUKON
ENERGY



YUKON ENERGY
CORPORATION

P.O. Box 5920
WHITEHORSE
YUKON Y1A 6S7
(867) 393-5300

March 24, 2014

Canadian Electricity Association
275 Slater Street, Suite 1500
Ottawa, Ontario K1P 5H9

Attention: Francis Bradley

Dear Mr. Bradley:

RE: School Energy Coalition (SEC) motion before the Ontario Energy Board (OEB) for an order requiring Oakville Hydro to provide confidential benchmarking analysis of the Canadian Electricity Association (CEA)

Yukon Energy Corporation has reviewed the CEA's comments and submission regarding the matter above and fully supports the CEA's request that the SEC motion, to the extent that it forces the disclosure of confidential benchmarking data provided to the CEA by Yukon Energy Corporation, be denied. Yukon Energy Corporation participates in the CEA benchmarking studies with the strict understanding and knowledge that any benchmarking data and information provided will not be disclosed to external parties and agrees with Item 6 of the CEA's submission that if this benchmarking information were so disclosed it would act as a strong disincentive for Yukon Energy Corporation to continue to participate in such surveys going forward.

Should you have any questions please contact the undersigned regarding this matter at (867) 393-5338 or by email at ed.mollard@yec.yk.ca.

Sincerely,

Ed Mollard
Chief Financial Officer
Yukon Energy Corporation

700 University Avenue, Toronto, ON M5G 1X6

Tel: 416-592-4463 Fax: 416-592-8519
andrew.barrett@opg.com

March 21, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Motion by the Canadian Electricity Association - EB-2013-0159

The purpose of this letter is to express OPG's views with respect to the above-referenced Motion by the Canadian Electricity Association (CEA).

OPG is a member of the CEA and uses CEA benchmarking information in its business planning and target setting. Accordingly, OPG would be concerned if compelled disclosure of CEA information caused the members of the CEA to discontinue their participation in these benchmarking activities. Loss of this benchmarking information would have a negative impact on OPG's planning activities.

Please contact me if you have any questions regarding this submission.

Sincerely,



Andrew P Barrett
VP Regulatory Affairs

cc: Canadian Electricity Association

Hydro Ottawa Limited
3025 Albion Road North, PO Box 8700
Ottawa, Ontario K1G 3S4
Tél.: (613) 738-6400
Fax: (613) 738-6403
www.hydroottawa.com

Hydro Ottawa limitée
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Télééc. : (613) 738-6403
www.hydroottawa.com



March 24, 2014

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge St., 27th floor
Toronto, Ontario
M4P 1E4

Dear Ms. Walli,

Re: EB-2013-0159 Oakville Hydro

Hydro Ottawa Limited is an electricity distributor serving the municipalities of Ottawa and Casselman, Ontario. Hydro Ottawa has learned that the School Energy Coalition ("SEC") has brought a motion in the above-referenced proceeding asking the Ontario Energy Board ("Board") for an order requiring Oakville Hydro to provide two surveys/studies, the provision of which would disclose confidential benchmarking data provided to the Canadian Electricity Association ("CEA") by its members.

Hydro Ottawa is not a party in this proceeding, nor is it seeking standing before the Board; however, Hydro Ottawa is compelled to write to the Board since a decision to order the production of the two surveys/studies requested by SEC would result in the release of Hydro Ottawa information. As part of its participation in the CEA benchmarking survey, Hydro Ottawa provides the CEA with sensitive information regarding its performance. Hydro Ottawa provides this information in order to assist in the identification of opportunities to improve business processes and efficiencies and potentially reduce costs in the provision of utility services and products for the benefits of its customers. Hydro Ottawa has always understood that the data will, at all times, be held in the strictest confidence. Indeed, Hydro Ottawa, as do all participating members, sign a binding confidentiality agreement with the CEA to this effect.

Should the Board make the order requested by SEC, Hydro Ottawa would be forced to re-evaluate its participation in the benchmarking studies. Secondly, should the Board make the order requested by SEC, Hydro Ottawa submits that other utilities will be reluctant to participate in benchmarking studies with Hydro Ottawa knowing that there is a high probability that confidential data will become public by means of the Ontario Energy Board. Hydro Ottawa respectfully submits that this would be to the detriment of its customers.

Additionally, if the Board were inclined to grant SEC's motion, Hydro Ottawa submits that SEC has not provided valid reasons and rationale for the production of the entire surveys/studies and the data for utilities other than Oakville Hydro. Paragraph 10 of SEC's motion states "SEC submits that the Board and intervenors cannot answer Issue 2.1, which specifically seeks to review Oakville Hydro performance in the area of efficiency benchmarking, without reviewing the studies and surveys that it has conducted." In paragraph 11, SEC indicates "understanding how Oakville Hydro performs against other utilities is an important way that parties can scrutinize the application and to determine if the proposed revenue requirement will lead to 'just and reasonable' rates." SEC's reasoning for the request is to evaluate Oakville Hydro and Oakville Hydro's performance. SEC has not provided any reasons or rationale why it must have the performance data of other utilities to determine 'just and reasonable' rates for Oakville Hydro. Hydro Ottawa submits that based upon the reasons and rationale given by SEC for the production of the studies, Oakville Hydro can fulfill SEC's request by providing a description of each metric that was compared to the other utilities, the industry average for each of those metrics, Oakville Hydro's relative position in comparison to the other utilities and any discussion and comment Oakville Hydro wishes to make. Hydro Ottawa respectfully submits that SEC's request can be fulfilled by extracting Oakville Hydro's data and results from the larger study.

In conclusion, Hydro Ottawa strongly opposes the request of SEC for the production of the entire surveys/studies because (1) as a result of such a decision, in the future, Hydro Ottawa foresees itself being unwelcome by other electric utilities in Canada and the U.S. in participating in quality benchmarking studies with them, all to the detriment of Hydro Ottawa's customers and (2) SEC has not provided valid reasons and rationale for the production of any data from utilities other than Oakville Hydro.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Hoey".

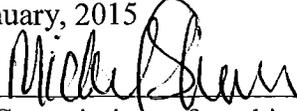
Patrick J. Hoey
Director, Regulatory Affairs

Cc: Francis Bradley, Vice President, Policy Development, Canadian Electricity Association

C

EXHIBIT C
Terms of Reference for CEA's Service Continuity Committee

This is Exhibit "C" referred to in the affidavit of Francis Bradley sworn before me this 21st day of January, 2015



A Commissioner for taking affidavits

Michel Shneer

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.

D

Exhibit D

CEA Data Collection and Sharing Policy

This is Exhibit "D" referred to in the affidavit of
Francis Bradley sworn before me this 21st
day of January, 2015

Michelle Shneer

A Commissioner for taking affidavits

Michelle Shneer



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 be 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) _____

E

Exhibit E

CEA Policies for Benchmarking Data in Regulatory Settings

<p>This is Exhibit "E" referred to in the affidavit of Francis Bradley sworn before me this 21st day of January, 2015</p>
<p><i>Michel Shneer</i></p>
<p>A Commissioner for taking affidavits</p>

Michel Shneer

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

ONTARIO ENERGY BOARD

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 Toronto Hydro-
System Electric Limited for an Order or Orders approving or fixing
just and reasonable rates and other service charges for the
distribution of electricity as of May 1, 2015.

AND IN THE MATTER OF Rule 27 of the Board's *Rules of
Practice and Procedure*.

**RESPONDING MOTION AND CROSS MOTION RECORD
OF THE CANADIAN ELECTRICITY ASSOCIATION
(Re: School Energy Coalition's Notice of Motion dated December 19, 2014)**

1. The Canadian Electricity Association ("CEA") opposes the School Energy Coalition's ("SEC") motion with respect to 8 CEA reports identified by Toronto Hydro-System Electric Limited ("Toronto Hydro") as being in its possession. The SEC seeks a copy of each of these reports (the "SEC Motion").
2. The CEA opposes the motion on two grounds. First, the CEA is the copyright owner of 7 of the 8 reports at issue and without its consent Toronto Hydro may not copy for the SEC, and the Board may not authorize or compel Toronto Hydro to copy, these 7 reports. The relief sought by the SEC would result in the infringement of the CEA's copyright under the federal *Copyright Act*.¹ No defences to claims of infringement of the CEA's copyright exist in this case.

¹ R.S.C., 1985, c. C-42.

Importantly, the *Copyright Act* binds the provincial Crown and is paramount to any order of the Board in conflict or operationally incompatible with this Federal statute. The Board's powers to order production of documents do not override statutory rights conferred by Parliament under the federal *Copyright Act*.

3. Second, 6 of the 8 reports at issue are confidential and should not be ordered disclosed to the SEC or the Board in the specific circumstances of this proceeding. Although copies of the materials at issue are in the possession of Toronto Hydro, this is effectively a motion to compel the production of confidential third-party (i.e. CEA) materials. The Board has acknowledged that ordering third parties to produce documents "is an unusual step to be taken only when the documents identified are clearly relevant and no prejudice or undue burden on the third parties results from the disclosure".² In this case, some of the CEA materials are clearly irrelevant and there would be material prejudice and undue burden to the CEA resulting from their disclosure.

4. It is important for analytical purposes to keep separate these two grounds, i.e. the CEA's proprietary copyright interest and the confidentiality of most of the reports. Just because a document is not confidential does not mean it can be *copied* without the CEA's consent. And just because the CEA does not own the copyright in a particular document does not mean it should be *disclosed* to the SEC.

5. As well, the motion should be denied on public policy grounds because granting the relief sought would have a chilling effect on the improvements for which Canadian power utilities strive by effectively precluding the national benchmarking and data analysis that CEA member utilities rely upon to improve their economic efficiency, performance and customer service

² *Toronto Hydro-Electric System Ltd. (Re)*, 2009 LNONOEB 46 ("*Toronto Hydro*"), at para. 29.

standards. As discussed below, compelling Toronto Hydro to reproduce for and provide to the SEC the CEA materials would result in Toronto Hydro, and perhaps other Ontario utility members of the CEA, no longer having access to the CEA’s future benchmarking activities. This would be inconsistent with the objective in section 1(1) of the *Ontario Energy Board Act, 1998*³ (the “OEB Act”) to promote economic efficiency and cost effectiveness in the transmission, distribution, sale and demand management of electricity in Ontario.

6. For these reasons, the SEC Motion should be denied.

7. The reports sought by the SEC do not all have the same characteristics and should not all be treated in the same manner. In summary, the CEA proposes that the CEA reports at issue in the SEC Motion be addressed as follows:

Report Name	Property of CEA?	Confidential?	Benchmarking?
2014 National Attitudes Report	Yes	Yes	No
2013 Public Attitudes Research Report	Yes	Yes	No
2012 Public Attitudes Research Report	Yes	Yes	No
2011 Public Attitudes Research Report	Yes	Yes	No
2014 Multi-Client Budget Benchmark Report (Information Technology)	Partial	Yes	Yes
2013 Service Continuity Data on Distribution System Performance in Electrical Utilities	Yes	Yes	Unreliable working draft
2012 Annual Service Continuity Report on Distribution System Performance in Electrical Utilities	Yes	No, available for sale	Yes
2011 Service Continuity Data on Distribution System Performance in Electrical Utilities	Yes	No, available for sale	Yes

³ S.O. 1998, Chapter 15, Schedule B.

THE SEC MOTION

8. The SEC Motion was commenced on December 19, 2014 by the SEC seeking an order requiring Toronto Hydro “to provide a full and adequate response to Interrogatory 1B-SEC-8, specifically to produce benchmarking documents that THESL has participated in through the Canadian Electricity Association”. The SEC’s Interrogatory 1B-SEC-8 sought the following:

Please provide a copy of all benchmarking studies, analysis and/or reports in the possession of the Applicant, that it has undertaken, or that it has participated in, since 2011, that has not already been in the application.

9. Toronto Hydro advised the CEA that in order to fully respond to Interrogatory 1B-SEC-8 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 would have to provide copies of the following reports to the SEC (the “CEA Reports”) (collectively with the CEA Data and the CEA Data Models, the “CEA Property”):

- (a) 2014 National Attitudes Report (Innovative Research Group Inc.);
- (b) 2013 Public Attitudes Research Report (IPSOS Reid);
- (c) 2012 Public Attitudes Research Report (IPSOS Reid);
- (d) 2011 Public Attitudes Research Report (IPSOS Reid);
- (e) 2014 Multi-Client Budget Benchmark Report (Information Technology) (the “Gartner Report”);
- (f) 2013 Service Continuity Data on Distribution System Performance in Electrical Utilities (CEA);

- (g) 2012 Annual Service Continuity Report on Distribution System Performance in Electrical Utilities (CEA); and
- (h) 2011 Service Continuity Data on Distribution System Performance in Electrical Utilities (CEA).

10. In response, the CEA advised Toronto Hydro that it did not consent to the disclosure and reproduction of the CEA Property. Accordingly, Toronto Hydro advised the SEC that it was “unable to provide copies of these materials as the CEA has advised that the information in them is proprietary and it has refused consent in response to Toronto Hydro’s request for disclosure and production.”

11. The SEC Motion does not provide any detailed rationale for its all-encompassing, overbroad request for disclosure of the CEA’s copyright protected and confidential intellectual property. In its notice of motion, the SEC simply equates its allegation that the reports are relevant to a right to a copy of those reports, with no real supporting evidence or argument. Essentially the SEC Motion asks the Board to compel the disclosure of material the SEC knew when it filed its motion was the subject of an assertion by the CEA that the material was confidential and intellectual property owned by a third party.

12. Moreover, despite an inquiry by the CEA after Toronto Hydro provided a list of the 8 CEA Reports to the SEC (and the SEC knowing that composite versions of certain CEA

benchmarking reports are for sale on the CEA's website), the SEC has declined to narrow its request for relief and seeks an Order with respect to all 8 CEA Reports.⁴

13. Moreover, although the Board did not give the CEA enough time to engage with all of its members about the SEC Motion, several of its power utility members have advised CEA that they are opposed to the SEC Motion for the reasons set out in their letters.⁵ These letters are worthwhile reading in their entirety. In addition to the harm to the CEA that would be caused by the SEC Motion being granted, which the CEA members oppose, these power utilities also advised that they would be inclined not to participate in any future benchmarking and survey activities where copies of the resulting reports would be provided to entities that are under the jurisdiction of the Board.⁶

RELIEF SOUGHT BY THE CEA

14. The CEA seeks an Order denying the SEC Motion with respect to disclosure of the CEA Property. The CEA reserves its rights with respect to the Board's finding in Procedural Order No. 5 that CEA is not eligible for an award of costs and notes, as discussed below, that the vast majority of its members are not located in Ontario and do not normally appear before the Board.

15. Should the Board grant the SEC Motion, the CEA requests an Order that the CEA Property be treated as confidential.

⁴ Affidavit of Francis Bradley sworn January 21, 2015 (the "Bradley Affidavit") at para. 23.

⁵ Bradley Affidavit, Exhibit "A". In the context of a similar dispute last year with the SEC about the disclosure of CEA materials (which dispute settled), several CEA members provided letters of comment, which are attached to Exhibit "B" of the Bradley Affidavit.

⁶ Bradley Affidavit, para. 6.

16. Should the Board order that the CEA Property be copied or disclosed to SEC, in whole or in part, either publicly or on a confidential basis, CEA intends to exercise its right of appeal under section 33 of the OEB Act and accordingly requests that the Board stay its decision with respect to disclosure of the CEA Property, in accordance with Rule 17.07 of the Board's *Rules of Practice and Procedure*, pending such appeal(s) or other review. Such a stay is required in order to avoid the "horse being out of the barn" with respect to disclosure to the Board and intervenors at the time of any appeal.

FACTS

THE CANADIAN ELECTRICITY ASSOCIATION

17. Founded in 1891, the CEA is the 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 and internationally. 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.⁷

18. CEA contributes to the regional, national and international success of its members through the delivery of quality value-added services. In addition, the CEA gives its members a productive and confidential space to exchange ideas and information in order to assist them to

⁷ Bradley Affidavit, para. 8.

improve their services, and to formulate and advocate a coherent industry viewpoint to decision makers on critical policy and regulatory issues.⁸

THE CEA SURVEY AND BENCHMARKING REPORTS

19. One of the services provided by the CEA to its members (located in Ontario and elsewhere)⁹ is confidential benchmarking services. The CEA also commissions surveys concerning subjects of interest to its members. The CEA designs these surveys and benchmarking studies very carefully as a tool for helping its members to improve their operations – in an environment where its members’ data and the reports will be kept absolutely confidential.¹⁰

20. The CEA owns the CEA Reports, with the exception of the information technology budget report that is partly owned by Gartner, Inc. (pages 12 to 17, 32 and 33 are owned by the CEA).¹¹

21. The 8 CEA Reports can be divided into two groups.

22. First, there are surveys designed and commissioned by the CEA that investigate public attitudes to matters of interest to the CEA (i.e. the 2014 National Attitudes Report¹² and the

⁸ Ibid., para. 9.

⁹ A list of CEA members is attached to the Bradley Affidavit as Schedule “1”. By far the majority of the CEA power utility members are not located in Ontario.

¹⁰ Bradley Affidavit, para. 12.

¹¹ Ibid., para. 12.

¹² The CEA paid Innovation Research Group Inc. and incurred direct internal expenses of approximately \$145,000 for the 2014 National Attitudes Report: see Bradley Affidavit, para. 15.

2011-2013 Public Attitudes Research Project Reports¹³) (collectively, the “CEA Survey Reports”). The CEA Survey Reports do not concern benchmarking. Instead they survey the attitudes of people outside the power utilities. The CEA Survey Reports were designed with the substantial involvement of the CEA, in consultation with CEA members, and the questions surveyed reveal the specific matters of interest to the CEA and its members, the disclosure of which would mean that companies would stop measuring their performances with respect to these indicators. As a result, the CEA and CEA members would no longer benefit from the information provided in these surveys which provides information about areas where CEA members can improve.¹⁴

23. The CEA includes the price and provision of the CEA Survey Reports as a core membership service, and they are a key selling point for membership in the association. In other words, one has to join the CEA to obtain the CEA Survey Reports. For this reason, the CEA never consents to copies of the CEA Survey Reports being made or provided to others.¹⁵

24. The CEA’s contracts with Innovation Research Group Inc. and IPSOS Reid provide for the CEA being the sole owner of the CEA Survey Reports.¹⁶

25. Second, there are CEA benchmarking reports about specific subjects that can only be created in an environment of confidentiality and trust (i.e. the 2011-2013 annual service continuity reports on distribution system performance and the information technology budget

¹³ With respect to the 2011-2013 Public Attitudes Research Project Reports, the CEA Paid IPSOS Reid and incurred internal expenses of approximately \$125,000 per year: see Bradley Affidavit, para. 16.

¹⁴ Bradley Affidavit, para. 14.

¹⁵ Ibid, para. 17.

¹⁶ Ibid., para. 18.

report) (collectively, the “CEA Benchmarking Reports”). The CEA Benchmarking Reports were designed with the substantial involvement of the CEA and consultation with CEA members. Notably, the annual service continuity reports on distribution system performance are versions of a report prepared by the CEA for nearly three decades.¹⁷

26. The 2011-2013 annual service continuity reports on distribution system performance were prepared by CEA employees and the reports are owned by the CEA.¹⁸

27. With respect to the 2011-2013 annual service continuity reports on distribution system performance, the CEA spent approximately \$80,000 per year (in respect of internal fees and expenses, as these reports are entirely developed within the CEA). The CEA recoups these costs by selling the reports to its members and not through other means. For this reason, it never consents to copies of the CEA Benchmarking Reports being made or provided without compensation.¹⁹

28. The CEA creates composite versions of the CEA Benchmarking Reports, which are available for sale on its website to non-members. However, the SEC continues to seek disclosure of all of all CEA Reports (rather than simply purchasing some of the reports on-line).²⁰

29. Importantly, the 2013 CEA service continuity report listed by Toronto Hydro as being in its possession is a working draft and confidential (non-composite) version of the report used by

¹⁷ Ibid., para. 19.

¹⁸ Ibid., para. 21.

¹⁹ Ibid., para. 22.

²⁰ Ibid., para. 23. To be clear, the 2011-2013 service continuity composite reports are available to the SEC on-line for purchase.

the CEA committee members as a tool for developing the final report. The CEA has obtained from Toronto Hydro the draft 2013 document, reviewed it, and found that it contains materially inaccurate data that was changed in later drafts. As a result, this draft is unreliable and the better 2013 source is the final report sold on the CEA website.²¹

30. The Gartner Report is an unusual benchmarking report for CEA. It was largely prepared by Gartner, Inc. and most of it is owned by Gartner. (Out of the report's 40 pages, 8 are owned by the CEA (the CEA provided the content) and the balance are owned by Gartner, Inc. pursuant to their agreement that the CEA owned what it supplied and Gartner, Inc. owned the rest). It was intended to be used only by the CEA and its members and not for regulatory purposes. It was designed with the substantial involvement of the CEA and in consultation with CEA members.²²

31. The CEA has not consented to the reproduction by Toronto Hydro of any of the CEA Reports or the CEA Data Models, or otherwise licensed them, nor consented to the Board authorizing their reproduction. Moreover, the CEA has not authorized the disclosure by Toronto Hydro of the CEA Reports or the CEA Data Models to the SEC or any utility regulator in Canada. The CEA Property remain confidential (other than the 2012 and 2013 composite reports available online).²³

32. The CEA has from time to time developed and published benchmarking information and reports for use by regulators, but only on being convinced that doing so is in the best interest of

²¹ Ibid. para. 25.

²² Ibid. para. 26.

²³ Ibid., para. 27.

itself and its members, and only by deliberate design. No such information or reports form part of the CEA Reports.²⁴

THE CEA’S CONFIDENTIALITY POLICIES

33. The CEA’s benchmarking activities are premised on each participating utility providing CEA Data about their operations to the CEA. All of these utilities have entrusted CEA with their confidential 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, the CEA and participating utilities abide by: (a) the Terms of Reference for CEA’s Service Continuity Committee; (b) the CEA Data Collection and Sharing Policy; and (c) the CEA Policies for Benchmarking Data in Regulatory Settings (the “BD/RS Policy”).²⁵

34. Page 2 of the CEA’s Terms of Reference for CEA’s Service Continuity Committee 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.”²⁶

35. Similarly, section 2.1 of the CEA “Data Collection and Sharing Policy” 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

²⁴ Ibid., para. 28.

²⁵ Bradley Affidavit, Exhibits “C”, “D” and “E”.

²⁶ Ibid., para. 30, Exhibit “C”.

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 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”, that exception has never been applied.²⁷

36. Pursuant to section 7.1 of the CEA Data Collection and Sharing Policy, 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”. This provision relates to the CEA members publicly comparing their owner numbers to the information in composite reports.²⁸

37. Recognizing that benchmarking data may be of assistance to utilities regulators, the CEA has developed policies to enable its members to provide benchmarking data in regulatory settings in a manner that does not violate the CEA’s copyright, breach the confidentiality terms and conditions that the bind CEA and its members, or harm the commercial interests and goodwill of the CEA.²⁹ Policy 1 of the BD/RS Policy 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 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,

²⁷ Ibid., para. 31, Exhibit “D”.

²⁸ Bradley Affidavit, para. 32, Exhibit “D”.

²⁹ Bradley Affidavit, Exhibit “E”.

“appropriate benchmarking indicators for assessing individual company performance over time will be developed.” Policy 7 provides that “[o]nly composite benchmarks deemed appropriate for regulatory environments will be produced.”³⁰

38. Further to this policy, the CEA has created benchmarking metrics for the use of regulators and its members have provided such metrics to regulators, for example, in respect of service continuity, members have provided their measures of System Average Interruption Duration Index (SAIDI) , System Average Interruption Frequency Index (SAIFI) and Customer Average Interruption Duration Index (CAIDI) to regulators, along with national comparators.³¹

39. The CEA and its members adhere to all of the foregoing policies. Information from CEA members is strictly confidential and not otherwise available for release. Non-adherence by one member, whether on its own volition or by regulatory compulsion, would have a significant negative impact on the CEA, its members and the benchmarking program in Canada. For this reason, the consequences for non-adherence are severe. Policy 7 of the BD/RS Policy 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.”³²

40. It took the CEA many years to build trust among its members sufficient for them to share confidential information with the CEA and each other. The trust placed in the disclosing members and the CEA benchmarking process would be ruined and other utilities would be

³⁰ Bradley Affidavit, para. 33, Exhibit “E”.

³¹ Ibid., para. 34.

³² Ibid., para. 35.

extremely reluctant to provide data to any future benchmarking program if the data provided could be subject to disclosure. 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.³³

ARGUMENT AND LAW

A. COMPELLING TORONTO HYDRO TO COPY THE CEA REPORTS WOULD BE A VIOLATION OF THE *COPYRIGHT ACT*

41. This first argument by the CEA does not apply to the portions of the Gartner Report owned by Gartner, Inc. Nonetheless, the CEA notes that the SEC has not adduced evidence that it has the consent of Gartner, Inc. for Toronto Hydro to reproduce the portion of the Gartner report owned by Gartner, Inc.

The CEA is the Copyright Owner of the CEA Property

42. The CEA Reports consists of works protected by copyright and owned by the CEA (except a portion of the Gartner Report as discussed above).

43. The Supreme Court has consistently held that “copyright is a creature of statute, and the rights and remedies provided by the *Copyright Act* are exhaustive”.³⁴ The *Copyright Act* describes the circumstances in which parties can use copyrighted material without the consent of

³³ Ibid., para. 37.

³⁴ *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, 2004 SCC 45, at para. 82; *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, at para. 9; *Théberge v. Galerie d’Art du Petit Champlain inc.*, 2002 SCC 34, at para. 5; *Bishop v. Stevens*, [1990] 2 S.C.R. 467, at para. 18; *v. Blue Crest Music Inc.*, [1980] 1 S.C.R. 357, at p. 373.

the copyright owner and none of these exceptions or user rights is present in this case. Given that the *Copyright Act* is a complete statutory code, a provincial board cannot derogate from the rights created thereunder or create rights regarding the use of copyright material not provided for by Parliament in the *Copyright Act*.

44. The basic structure of copyright law is not complex.

45. Pursuant to section 5(1) of the *Copyright Act*, copyright subsists in every unpublished original literary, dramatic, musical and artistic work authored in Canada. The term “literary work” is defined in section 2 to include “tables, computer programs, and compilations of literary works.” “Compilation” is defined, in part, as “a work resulting from the selection or arrangement of data.” The CEA Data Model is such a compilation of CEA Data.

46. To qualify as “original” under section 5(1), the author of the compilation need only have exercised some amount of skill and judgment in creating the work (selecting and arranging the data in the case of a compilation).³⁵

47. The CEA Property is made up of original works, developed with skill and knowledge of the CEA and its members, as described above at paragraphs 19-30.

48. Pursuant to section 13(3) of the *Copyright Act*, the CEA, as the employer of the authors of the CEA Data Model and the CEA Service Continuity Reports, is the copyright owner of such

³⁵ *CCH Canadian Td. v. Law Society of Upper Canada*, 2004 SCC 13, at para. 16.

property.³⁶ Pursuant to section 13(4) of the *Copyright Act*, the CEA, as the assignee of the intellectual property in the CEA Survey Reports, is the copyright owner of those reports.

The Board is Without Authority to Authorize Toronto Hydro to Reproduce for the SEC the Reports in which the CEA Owns the Copyright

49. Pursuant to section 3(1) of the *Copyright Act*, the CEA has the sole and exclusive right to reproduce and **authorize** the reproduction of the CEA Data Models and the CEA Reports (except portions of the Gartner Report) or any substantial part thereof:

“3. (1) For the purposes of this Act, “copyright”, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(a) to produce, reproduce, perform or publish any translation of the work,

...

(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,

...

and to authorize any such acts.”

50. Section 27(1) of the *Copyright Act* provides that “[i]t is an infringement of copyright for any person to do, without the consent of the owner of the copyright, anything that by this Act only the owner of copyright has the right to do.” Therefore, anyone who, without the legal authority to do so, reproduces or orders the reproduction of the CEA Data Models and/or the CEA Reports (except portions of the Gartner Report) without the consent of the CEA would be

³⁶ *Teklogix v. Zaino*, [1997] O.J. No. 4148 at para. 47. It is not necessary to own copyright in the constituent data of a compilation in order to have copyright ownership over the compilation itself: see *Robertson v. Thomson Corp.*, 2006 SCC 43, at para. 30.

infringing the CEA's copyright. Notably, what the SEC Motion seeks is a "copy" of each of the CEA Reports – exactly what Toronto Hydro may not provide and the Board may not authorize.

51. To the extent that the Board compels reproduction of the CEA Property (or any substantial part thereof), absent the CEA's consent, it would be infringing the CEA's authorizing copyright interests. This it may not do.

No Exception of "Fair Dealing" Applies In This Proceeding

52. None of the exceptions or user rights with respect to copyright infringement are present in this proceeding for the reasons set out below.

53. Pursuant to section 29 of the *Copyright Act*, "[f]air dealing for the purpose of research, private study, education, parody or satire does not infringe copyright." The test for fair dealing involves two steps. The first is to determine whether the dealing is for the allowable purpose of, for example, "research" (it is inconceivable that the relief sought by the SEC can be characterized as private study, education, parody or satire). The second step is to assess whether the dealing is "fair". The onus is on the person invoking "fair dealing" to satisfy both aspects of this test. To assist in determining whether the dealing is "fair", the following six factors are to be considered: (1) the purpose of the dealing, (2) the character of the dealing, (3) the amount of the dealing, (4) alternatives to the dealing, (5) the nature of the work used, and (6) the effect of the dealing on the work.³⁷

³⁷ *Public Performance of Musical Works, Re*, 2012 SCC 36, at paras. 33-48; *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, at para. 53.

54. In respect of the first step of the test, the CEA anticipates that the SEC or Board Staff may argue that the exception for fair dealing for the purpose of research applies in this case. While the Supreme Court of Canada has stated that the term “research” should be given a broad interpretation, it did not go so far as to suggest that the use of confidential, proprietary documents in a regulatory proceeding should be included as “research”.³⁸

55. Moreover, the fair dealing user right cannot be interpreted as being available to the provincial Crown, or a board created under provincial legislation, because other provisions of the *Copyright Act* specifically grant to the Crown rights to use copyrighted works without infringing them. For example, section 45(1) creates a right to import copyright works for government and under section 29.7 gives government educational institutions special exceptions with respect to copyright. Thus, reading the *Copyright Act* as a whole it is apparent that Parliament’s intention was to address government rights specifically and not wrap them into the fair dealing user right.

56. In respect of the second step of the test, the six “fairness” factors should be assessed as follows, leading to a conclusion that the relief sought by the SEC is not a fair dealing:

- (a) **Purpose** – The SEC does not claim any of the purposes enumerated in section 29. All that the SEC states in paragraph 6 of its notice of motion is that benchmarking information is required for rate regulation. The SEC’s purpose for requesting the CEA Reports is simply fishing, and to capitalize on the selection, compilation and analysis of the benchmarking information and CEA Data in the CEA Property, which represents several hundreds of thousands of dollars in intellectual property investment expended by the CEA in respect of the CEA Property, without paying

³⁸ *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, at para. 54.

even for the reports the CEA has for sale to non-members and without dropping its request for attitude surveys that do not relate to benchmarking.³⁹ This is not a legitimate purpose.

- (b) **Character** – The character factor examines how the CEA Data and works are proposed to be dealt with by the SEC. In *CCH*, the Supreme Court held that it may be relevant to consider the custom or practice in the industry to determine whether or not the character of the dealing is fair.⁴⁰ In the electricity industry, the custom or practice has been for the CEA Data Models and CEA Reports to be treated on a confidential and proprietary basis, as described at paragraphs 33-39 above. They are kept confidential, with detailed applicable CEA policies, with the exception of the composite reports published by CEA. The industry has respected this practice and other utility boards have consistently recognized the proprietary and confidential nature of the CEA Data by refusing to order that it be disclosed. Thus, the current custom or practice is to treat the CEA material as confidential and proprietary intellectual property.
- (c) **Amount** – A dealing is less fair where, as is proposed in this case, the *entirety* of the copyrighted work would be infringed.⁴¹ This motion is not a situation where non-confidential excerpts are sought or where the SEC has indicated that it would be satisfied with the data that CEA has prepared to make available consistent with its regulatory disclosure policy. Instead, the SEC demands copies of entire

³⁹ Bradley Affidavit, para. 23.

⁴⁰ *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, at para. 55

⁴¹ *Public Performance of Musical Works, Re*, 2012 SCC 36, at para. 39.

reports – relevant or not and available for sale or not. This suggests that what SEC proposes goes beyond fair dealing.

- (d) **Alternatives** – A dealing is less fair where it was not reasonably necessary to achieve the ultimate purpose.⁴² The SEC has already been provided with significant benchmarking information to assist it in determining the appropriate rate regulation and can buy the composite version of the service continuity reports on the CEA website. And there is another alternative available to the infringing activity. For example, the CEA, the Board, Toronto Hydro, and the SEC, can enter into discussions to consider whether an acceptable resolution can be reached that respects CEA’s copyright and confidentiality requirements while providing to the SEC and Board adequate disclosure to relevant information if it exists.
- (e) **Nature** – A dealing is less fair where, as in this case, most of the works are intended to be confidential.⁴³ Many of the CEA Reports contain company sensitive information of CEA members from both Ontario and outside the province, who provide such information on the sole basis that such information will remain confidential. Moreover, the CEA Survey Reports reveal the CEA and its members’ thinking about what is important to power utilities (confidential information).
- (f) **Effect** – A dealing is less fair where it adversely affects the work. There is compelling evidence on this motion that the effect of producing the CEA Property

⁴² *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, at para. 57.

⁴³ *Ibid.*, at para. 58

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, disclosure of the CEA Property will cause irreparable commercial harm to CEA.⁴⁴

57. For the reasons set out above, the exception for fair dealing is not met. Accordingly, compelled disclosure of the CEA Reports would be an infringement of the CEA's copyright under the *Copyright Act*.

The Federal Copyright Act is Binding on the Board

58. The *Copyright Act* is binding on the Board and the rights granted to the CEA therein are paramount to any order of the Board that is in conflict or operationally incompatible with this federal statute.

59. A recent decision of the Federal Court of Appeal confirms that agents of the Crown must abide by federal copyright law. The Court held that Parliament clearly intended to bind the federal and provincial Crowns by the express language of the *Copyright Act* and through logical inference.⁴⁵ The Court's reasoning in this regard is compelling. In our submission, the Board's ability to require production of a third party's copyrighted material must now be assessed in light of the *Access Copyright* case.

60. The *Copyright Act* is a federal statute and copyright is a subject of exclusive federal jurisdiction under section 91(23) of the *Constitution Act, 1867*. Any order of the Board in

⁴⁴ Bradley Affidavit, paras. 35-40, Exhibits "A" and "B".

⁴⁵ *Manitoba v. Canadian Copyright Licensing Agency (Access Copyright)*, 2013 FCA 91, at para. 48 ("*Access Copyright*")

conflict with the *Copyright Act* would be invalid since such order would be based on provincial legislation. The doctrine of federal paramountcy dictates that where there is an inconsistency, a conflict or an incompatible operational effect between validly enacted but overlapping provincial and federal legislation, the provincial legislation is inoperative.⁴⁶

61. An order under provincial legislation need not result in an operational conflict for the doctrine to apply. If the provincial order would “frustrate the purpose of a federal enactment, whether by making it impossible to comply with the latter or by some other means”⁴⁷, such order is rendered inoperative by the doctrine of federal paramountcy. Also, it is a fundamental principle of federalism that the division of powers be respected.⁴⁸

62. As a matter of copyright law, the CEA, as the copyright owner of the CEA Data Models and the CEA Reports (except the Gartner Report) has the right to refuse to reproduce or license this property or to license it on the basis that specific terms and conditions are adhered to. This is the case even in the administrative law contract. For example, the Competition Tribunal has held that “[t]he right granted by Parliament to exclude others is fundamental to intellectual property rights”⁴⁹; it allows the copyright owner “to refuse to license and it places no limit on the sole and exclusive right to license.”⁵⁰ Therefore, in the *Warner Music* case, the Competition Tribunal refused to order that a compulsory license be granted to BMG, where Warner Music had refused to license its musical works to BMG.

⁴⁶ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13, at paras. 11-14 (“*Rothmans*”).

⁴⁷ *Rothmans*, at para. 14.

⁴⁸ *Reference re Securities Act*, 2011 SCC 66, at paras. 61-62.

⁴⁹ *The Director of Investigation and Research v. Warner Music Canada Ltd. et al.*, 1997 C.C.T.D. No. 53, 78 C.P.R. (3d) 321 (“*Warner Music*”), at para. 30; followed in *Harris v. GlaxoSmithKline Inc.*, 2010 ONCA 872, at para. 19, leave to appeal refused by the SCC.

⁵⁰ *Ibid.*, *Warner Music*, at para. 32.

63. Moreover, the Board, like all other tribunals, is a creature of statute, imbued only with the jurisdiction and powers granted under its enabling legislation. In *Warner Music*, the Competition Tribunal accepted Warner Music's position that, unlike other provisions of the *Competition Act* that give the Federal Court the express power to override the *Copyright Act*, "nowhere in the [*Competition Act*] is the Tribunal given the power to override the simple exercise of intellectual property rights" and "any grant of such a power must be based on clear and unequivocal language."⁵¹ Therefore, the Competition Tribunal held that it did not have the jurisdiction to override the *Copyright Act*.

64. The Board, a constitutionally inferior provincial tribunal, would also need the express power based on clear and unequivocal language in order to override the *Copyright Act*. The Board's enabling provincial legislation, the OEB Act and the *Statutory Powers Procedure Act*⁵² (the "SPPA"), are completely silent with respect to the *Copyright Act*. The Board's authority with respect to the disclosure of documents is derived solely from section 21(1) of the OEB Act and sections 5.4(1) and 12(1) of the SPPA.⁵³ This authority is explicitly limited by section 5.4(1.1) of the SPPA, which provides that "[t]he tribunal's power to make orders for disclosure is subject to any other Act or regulation that applies to the proceeding." The *Copyright Act* clearly applies to the proceeding, given that the Board's jurisdiction to compel disclosure of copyright-protected material of a third party is in dispute.

⁵¹ *Warner Music*, at paras. 26 and 31.

⁵² R.S.O. 1990, Chapter S. 22.

⁵³ Rule 14.01 with respect to document disclosure has been adopted by the Board in its *Rules of Practice and Procedure*.

65. CEA has not granted its consent to the disclosure and reproduction of the CEA Data Models and the CEA Reports or any substantial part thereof; a consent that is solely and exclusively within the authority of CEA to grant as the copyright owner of this material. An order of the Board compelling Toronto Hydro to disclose the CEA Property would be *ultra vires* the powers of the Board, would constitute an infringement of copyright in violation of the *Copyright Act* and would be inoperative. This would be an incompatible operational effect.

66. If the Board were to compel disclosure of the CEA Property (or any substantial part thereof), it would essentially be compelling the CEA to license its copyright material to the SEC on terms to which the CEA objects and would be compelling the CEA to effectively license its property to the SEC when it is under no legal obligation to do so. This would be a conflict between the two laws. The Board has no jurisdiction to override CEA's right as a copyright owner to refuse to reproduce or license the CEA Property.

B. MOST OF THE CEA REPORTS ARE CONFIDENTIAL AND SHOULD NOT BE ORDERED DISCLOSED BY THE BOARD

67. Although the SEC Motion is structured as a motion to compel Toronto Hydro to copy and disclose to the SEC the CEA Reports, in substance it is actually a motion to produce third-party materials of the CEA.

68. Six of the 8 CEA Reports (not the 2012 and 2013 composite service continuity reports) are confidential and are subject to the confidentiality restrictions described above (the "Confidential Reports").

Six of the 8 CEA Reports are Confidential

69. The CEA Survey Reports reveal what the CEA believes to be the key issues confronting the electricity distribution sector, having consulted with CEA members and taking into account cross-Canada concerns. As described above, the CEA Survey Reports are an important value-add to incent power utilities to join the CEA. If such studies are available to others, particularly intervenors, these surveys would be at risk. For this reason they are treated confidential.

70. Similarly, the Gartner Report and 2013 non-composite service continuity report are confidential for the reasons and under the policies discussed above.

71. Even if the Board has the jurisdiction to compel disclosure of a third party's copyright protected documents (which it does not), the courts have held that compelling disclosure from a third party is an extraordinary and intrusive invasion on the rights of a non-party that should only be exercised in the rarest of circumstances. The interests of the party seeking such disclosure must be balanced against the third party's right to confidentiality, especially where the non-party asserts its proprietary rights. Indeed, the Board itself has acknowledged that ordering third parties to produce documents "is an unusual step to be taken only when the documents identified are clearly relevant and no prejudice or undue burden on the third parties results from the disclosure".⁵⁴ This unusual step is not warranted in the context of the SEC Motion, which effectively seeks third party disclosure of CEA materials.

⁵⁴ *Toronto Hydro*.

72. In *Tetefsky v. General Motors Corp.*⁵⁵, the Court denied a motion to compel a third party (JATO) to produce proprietary information, notwithstanding the plaintiffs' arguments that such information was needed in order for it to proceed with its action. JATO refused to disclose the information on several grounds, including that such information was confidential and subject to copyright protection and that its compelled disclosure would be a violation of copyright.

73. Notwithstanding that Rule 30.10 of the *Rules of Civil Procedure* explicitly provides for the production of documents from non-parties (we note that the Board's rules do not contain such an express provision), the Court in *Tetefsky* noted that the threshold for granting such an order is high and should only be made in exceptional circumstances.⁵⁶ In making the determination of whether to order production from a non-party, the Court may consider the following factors: (1) the importance of the document to the issues in the litigation; (2) whether production at the discovery stage as opposed to production at trial is necessary to avoid unfairness to the moving party; (3) whether the examination of the opposing party with respect to the issues to which the documents are relevant would be adequate to obtain the information in the document; (4) the availability of the document or its information from another source that is accessible to the moving party; (5) the relationship of the non-party from whom production is sought to the litigation and the parties to the litigation; and (6) the position of the non-party with respect to production (the "Stavro Test").⁵⁷ The Stavro Test has been adopted by the Ontario

⁵⁵ *Tetefsky v. General Motors Corp.*, 2010 ONSC 1675 (Ont. Sup. Ct.), affirmed [2011] O.J. No. 1390 (Ont. C.A.) ("*Tetefsky*").

⁵⁶ *Ibid.*, at para. 41.

⁵⁷ *Ibid.*, at para. 42, citing the test established by the Ontario Court of Appeal in Ontario (*Attorney General*) v. *Stavro, Re The Estate of Harold Edwin Ballard* (1995), 26 O.R. (3d) 39 (Ont. C.A.).

Municipal Board and the Ontario Assessment Review Board in order to determine whether to order production from a non-party.⁵⁸

74. The Court in *Tetefsky* also held that in order to obtain the relief requested, which is extraordinary and intrusive on the rights of a non-party, the party seeking such disclosure must establish necessity.⁵⁹ Furthermore, even if necessity is established, the court “must balance the situation and the interests of the party seeking disclosure against the position and the interests of the non-party, including the non-party’s interest in privacy and confidentiality, and the court must also weigh any public interest that would justify non-disclosure”, so that the Court will not impinge unnecessarily upon the property and privacy rights of non-parties.⁶⁰ The Court also took into consideration that compelled disclosure would amount to an expropriation of JATO’s property⁶¹ and would be harmful to its “stock in trade” and goodwill.⁶²

75. In refusing to compel production of the third party information in *Tetefsky*, the Court held:

I appreciate that the court has the power and has exercised it to take away a non-party’s rights of property and privacy, but, in my opinion, the exercise of the power to compel production must be rare when a non-party wishes to assert its property and privacy rights as opposed to objecting merely on the grounds that the information it has is irrelevant to the proceedings or on the grounds

⁵⁸ *JDS Investments Ltd. v. Regional Assessment Commissioner, Region No. 15*, [1996] O.M.B.D. No. 1538; *Mississauga (City) Official Plan Amendment No. 20 (Re)*, [2002] O.M.B.D. No. 316; *Hammerson Canada Inc. v. Guelph (City)*, [2000] O.M.B.D. No. 1211; *Woodbine Entertainment Group v. Municipal Property Assessment Corp. Region No. 9*, [2007] O.A.R.B.D. No. 652.

⁵⁹ *Tetefsky*, at para. 44.

⁶⁰ *Ibid.*, at para. 47.

⁶¹ *Ibid.*, at para. 48.

⁶² *Ibid.*, at para. 52.

that it would simply be bothered or inconvenienced by producing the information.⁶³

76. The SEC has failed to prove that the CEA Property is clearly relevant and that disclosure of such material is necessary in the context of this proceeding. This failure must be balanced with the fact that compelled disclosure of the Confidential Reports would result in a violation of copyright and a breach of confidentiality, would be harmful to the CEA's stock in trade and goodwill, and would be contrary to the public interest.

77. This harm to the CEA is clear. The CEA's benchmarking activities are dependent on the participating organizations providing to the CEA considerable confidential data about their own operations. The provision of confidential information is premised on the basis that the information will not be shared with anyone except the participating utilities themselves. As described above at paragraph 40, it took the CEA many years to build trust among its members sufficient for them to share confidential information with CEA and each other.

78. CEA's benchmarking studies, data sets, modelling and analytics are all part of a commercial endeavour pursuant to which CEA generates revenues, as described above. The intellectual property for which SEC seeks disclosure constitutes CEA's stock in trade. The disclosure of this property will cause irreparable commercial harm to CEA because its customers will be much less likely to participate in CEA studies if the confidential outputs are subject to regulatory disclosure. If utilities do not participate in the analytical work that CEA undertakes,

⁶³ *Ibid.*, at para. 51.

that work becomes less valuable to users, CEA's revenues are diminished and over time the materials that CEA offers for sale will no longer be commercially viable.⁶⁴

79. While the CEA has developed individual and composite benchmarks under its BD/RS Policy, and have consistently been relied upon by various provincial utilities boards, no such board has ever compelled disclosure of the CEA Data Models or CEA reports.

Other Provincial Utility Boards have Refused to Compel Disclosure of CEA Material

80. The CEA has never authorized the disclosure of the CEA Data Models or CEA Reports to any utility regulator in Canada, nor, to CEA's knowledge, have these materials been disclosed by CEA members. Moreover, as described below, on four separate occasions, other provincial utility boards have recognized the proprietary nature of similar material and quite properly refused to compel disclosure of copyrighted third party documents, including CEA material. These boards have recognized that protection of proprietary data that is used to benchmark utilities' performance and efficiency is in the public interest.

81. In *AltaLink Management Ltd. (Re)*, the Alberta Energy and Utilities Board (the "Alberta Board") initially directed AltaLink to file all benchmarking information the CEA collects from AltaLink and its peers. However, in response to AltaLink advising that as of 2006, CEA members are not authorized to release any CEA benchmarking data to external parties, the Alberta Board denied requests by two parties to compel such disclosure, instead noting as follows:

⁶⁴ Bradley Affidavit, paras. 35-40.

Now that the CEA has restricted its member utilities from releasing any of the CEA's benchmarking data to external parties outside the utility, the Board recognizes that AltaLink is not in a position to fully comply with the Board's direction

82. Accordingly, the Alberta Board relieved AltaLink from complying with its direction and instead directed AltaLink to file its individual benchmarking information.⁶⁵

83. Shortly thereafter, in *ENMAX Power Corp. (Re)*, the Alberta Board accepted the applicant's justification that it could not provide CEA statistics regarding planned and unplanned outages because CEA does not permit such disclosure.⁶⁶

84. The Nova Scotia Utility and Review Board (the "Nova Scotia Board") has also refused to compel disclosure of CEA statistics about utilities beyond the applicant in question. In *Nova Scotia Power Incorporated (Re)*, the applicant refused to file the provincial numbers that compared its reliability indices to other Atlantic Canadian utilities because such data is provided to the CEA on a confidential basis. The Nova Scotia Board ultimately did not require that the CEA data be filed and accepted the applicant's position that the party arguing for disclosure had provided no evidence that such data was needed to assess the application and that it was open to that party to file any such data which might be available in the public domain.⁶⁷

85. Similarly, while not dealing with CEA material, in *ATCO Electric Ltd. (Re)*, the Alberta Board refused to compel the disclosure of copyrighted third party material. The Alberta Board had previously instructed ATCO to provide information to customers on forward prices. ATCO

⁶⁵ *AltaLink Management Ltd. (Re)*, [2007] A.E.U.B.D. No. 12, at paras. 598 to 607.

⁶⁶ *ENMAX Power Corp. (Re)*, [2007] A.E.U.B.D. No. 22, at paras. 18 to 20.

⁶⁷ *Nova Scotia Power Incorporated (Re)*, 2012 NSUARB 53, at paras.125-128.

indicated that it relied on copyrighted, third party information to forecast future prices and such information could not be published. The Alberta Board accepted this argument and directed ATCO to develop a process to provide forward price information to appropriate customers and to communicate this process to the Alberta Board and interested parties.⁶⁸

Disclosure Is Contrary to the Public Interest

86. It is contrary to the public interest and the objectives of the OEB Act to effectively preclude national benchmarking exercises by compelling disclosure to the public or intervenors. As noted above, CEA members have strenuously objected to such disclosure requests, both in the past and in the current proceeding before the Board.

87. If CEA members do not participate (as is expected if compelled disclosure was ordered), it would also prejudice the economic interest of, cause undue financial loss to, or otherwise be injurious to the financial interest of CEA. Without CEA members, the CEA would be unable to provide its services, to the detriment to the public interest.

88. Compelled disclosure of the Confidential Reports, even subject to a confidentiality undertaking, puts at risk CEA's entire benchmarking program. If disclosure of any of the Confidential Reports occurs and trust in CEA's confidentiality policies is lost, it is unlikely that electrical utility national benchmarking will be possible anymore. Such benchmarking helps improve utility productivity and performance, which in turn results in significant benefits to companies, shareholders and ratepayers.

⁶⁸ *ATCO Electric Ltd. (Re)*, [2003] A.E.U.B.D. No. 42, at paras. 186-193.

DOCUMENTARY EVIDENCE AND EVIDENCE RELIED UPON

89. CEA proposes to rely upon:
- (a) the Bradley Affidavit and the Exhibits attached thereto;
 - (b) additional letters from CEA members as they are provided;
 - (c) the Record in EB-2014-0116; and
 - (d) such further and other material as may be required and the Board may permit.

January 21, 2015

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SCHEDULE “1”

LIST OF AUTHORITIES

LEGISLATION

Copyright Act, R.S.C. 1985, c. C-42.

Section 3(1)
Section 5(1)
Section 13(3)
Section 27(1)
Section 29.7
Section 41.24
Section 45(1)
Section 89

Ontario Energy Board Act, 1998, S.O. 1998, Chapter 15, Schedule B

Section 1(1)
Section 21(1)

Statutory Powers Procedure Act, R.S.O. 1990, Chapter S. 22

Section 5.4(1)
Section 5.4(1.1)
Section 12(1)

CASES

Toronto Hydro-Electric System Ltd. (Re), 2009 LNONOEB 46

Manitoba v. Canadian Copyright Licensing Agency (Access Copyright), 2013 FCA 91

Rothmans, Benson & Hedges Inc. v. Saskatchewan, [2005] S.C.J. No. 1, [2005] 1 S.C.R. 188

CCH Canadian Ltd. v. Law Society of Upper Canada, 2004 SCC 13

The Director of Investigation and Research v. Warner Music Canada Ltd. et al., 1997 CanLII 3725 (CT)

Reference re Securities Act, 2011 SCC 66

Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers, 2004 SCC 45

Théberge v. Galerie d'Art du Petit Champlain inc., 2002 SCC 34

Bishop v. Stevens, [1990] 2 S.C.R. 467

Compo Co. v. Blue Crest Music Inc., [1980] 1 S.C.R. 357

AltaLink Management Ltd. (Re), [2007] A.E.U.B.D. No. 12

ENMAX Power Corp. (Re), [2007] A.E.U.B.D. No. 22

Nova Scotia Power Incorporated (Re), 2012 NSUARB 53

ATCO Electric Ltd. (Re), [2003] A.E.U.B.D. No. 42

Tetefsky v. General Motors Corp., 2010 ONSC 1675 (Ont. Sup. Ct.), affirmed [2011] O.J. No. 1390 (Ont. C.A.)

JDS Investments Ltd. v. Regional Assessment Commissioner, Region No. 15, [1996] O.M.B.D. No. 1538

Mississauga (City) Official Plan Amendment No. 20 (Re), [2002] O.M.B.D. No. 316

Hammerson Canada Inc. v. Guelph (City), [2000] O.M.B.D. No. 1211

Woodbine Entertainment Group v. Municipal Property Assessment Corp. Region No. 9, [2007] O.A.R.B.D. No. 652

Teklogix v. Zaino, [1997] O.J. No. 4148

ONTARIO ENERGY BOARD

EB-2014-0116

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 Toronto Hydro-System Electric Limited for an Order or Orders approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015.

ONTARIO ENERGY BOARD

**RESPONDING MOTION AND CROSS MOTION RECORD
OF THE CANADIAN ELECTRICITY ASSOCIATION
(Re: School Energy Coalition's Notice of Motion dated
December 19, 2014)**

Goodmans LLP

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