EB-2022-0200

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule. B);

AND IN THE MATTER OF an Application by Enbridge Gas Inc., pursuant to section 36(1) of the *Ontario Energy Board Act, 1998,* for an order or orders approving or fixing just and reasonable rates and other charges for the sale, distribution, transmission and storage of gas as of January 1, 2024

COMPENDIUM OF THE SCHOOL ENERGY COALITION
(Motions Hearing)

Shepherd Rubenstein P.C.
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Fax: 416-483-3305

Counsel for the School Energy Coalition

ENBRIDGE GAS INC.

Answer to Interrogatory from
School Energy Coalition (SEC)

Interrogatory

Reference:

1

Question(s):

Please provide a copy of all third-party benchmarking analyses, studies, reports, and/or similar documents, undertaken for, or include Enbridge, since 2017, that are not already included in this application, regarding any aspect that directly or indirectly relates to a material aspect of Enbridge's business.

Response:

Enbridge Gas describes its continuous improvement philosophy and benchmarking in Section 6 of its Utility System Plan, provided at Exhibit 2, Tab 6, Schedule 1.

Enbridge Gas participates in annual benchmarking studies through its membership in the Canadian Gas Association (CGA) and American Gas Association (AGA). The AGA also addresses special topic areas, which have included: Contractor Oversight, Transmission Integrity, ROW Encroachment and Permitting, System Collection and Maintenance of As-Builts, QC and Training, DIMP, Emergency Response and Preparedness, Main and Service Construction, System Regulation and OPP, Carbon Emission Reduction, Leak Repair, Damage Prevention, Gas Control and Gas Compliance.

Both the CGA and AGA have confidentiality agreements in place which require signatories to request permission to distribute their work. CGA and AGA did not grant Enbridge Gas this permission and as such, Enbridge Gas cannot provide the reports.

Additionally, Enbridge Gas participated in customer satisfaction benchmarking studies: Mastio 2022 Transportation Customer Value/Loyalty Benchmarking Study and JD Power 2019 Gas Utility Residential Customer Satisfaction Study.

The Mastio Study is a customer satisfaction and loyalty benchmarking study covering North American pipelines (transportation market). Mastio did not give Enbridge Gas

permission to share the study, however a press release for the 2022 study is available online[1]

The JD Power Study is focused on residential customer satisfaction with natural gas, electric and hybrid utilities in the United States, however EGD opted to participate. The results of this study do not include Union or Enbridge Gas, and relate only to 2018. The report was provided on a confidential basis.

Finally, Enbridge Gas subscribes to ESource, which is a subscription-based consulting, data and advisory service provided to North American utilities. The main topics it covers are: electric vehicles, AMI implementation, electrification, batteries, energy equity, customer experience, grid and asset optimization, demand response, and program design. Enbridge Gas was included in the following benchmarking studies:

- 2019 Website Benchmark Study
- 2021 Website Benchmark Study
- 2021 Digital Metrics Service Requests Study
- 2021 Digital Metrics Bill Pay Study
- 2022 Customer Experience Study
- 2021 Utility Social Media Study
- 2018 Utility Social Media Study (Union Gas)
- 2021 Account Management Assessment

ESource granted permission to list the benchmarking studies, but did not grant permission to share the reports.

[1] https://www.mastio.com/_files/ugd/43ede9_733cd1117d574e6fa5dbf06fc8e7a32c.pdf.

ENBRIDGE GAS INC.

Answer to Undertaking from
School Energy Coalition (SEC)

Undertaking

Tr: 68

With Mr. O'Leary's caveats to the inquiry, to provide a copy of the annual benchmarking studies from the CGA and the AGA, as well as those listed; to provide a list of what is benchmarked, what is actually the contents of those benchmarking studies.

Response:

As outlined in response at Exhibit I.1.2-SEC-77, Enbridge Gas is unable to provide the list of what is included in the annual benchmarking studies, including details of the contents of the studies. The AGA did not grant Enbridge Gas permission to provide the list of what is benchmarked as all of the information in the program is covered by a confidentiality agreement. The CGA indicated that there is a subset of data available in the public domain that can be found on the CGA website[1]. The remainder of the information in the CGA Program is covered by a confidentiality agreement.

[1] Corporate Profile 2021 Final Report. 2022. https://www.cga.ca/wp-content/uploads/2022/10/Corporate-Profile-2021.pdf

Shepherd Rubenstein

BY EMAIL and RESS

Mark Rubenstein
mark@shepherdrubenstein.com
Dir. 647-483-0113

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

April 10, 2023
Our File: EB20220200

Attn: Nancy Marconi, Registrar

Dear Ms. Marconi:

Re: EB-2022-0200 – Enbridge 2024-2028 – SEC Motion

We are counsel to the School Energy Coalition ("SEC"). Pursuant to Procedural Order No. 4, below is the information for which SEC seeks production at the Motion Hearing, and the rationale, including why the requested information is relevant and should be produced [1] by Enbridge Gas Inc. ("Enbridge").

1. Interrogatory 1.2-SEC-77 (CGA/AGA Benchmarking Information)

SEC requested, in interrogatory 1.2-SEC-77[2], copies of benchmarking information not already included in the Application, that directly or indirectly related to material aspects of Enbridge's business. In the interrogatory response, Enbridge provided information about benchmarking work it has participated in, including annual and special studies through its membership in the Canadian Gas Association ("CGA") and American Gas Association ("AGA"), but refused to produce the studies. Enbridge does so, not based on relevance or that it does not have possession of the material, but that the studies are subject to a confidentiality agreement that requires permission to distribute the work. Enbridge says that the necessary permissions have not been granted.[3]

In response to Undertaking JT1.7, for similar reasons, Enbridge refused to even provide details on what is included in the annual benchmarking studies.

SEC submits that the OEB should order production of the CGA/AGA benchmarking studies.

The OEB has repeatedly and consistently found that confidentiality and non-disclosure agreements

[1] *Rules of Practice and Procedure*, Rule 27.03

[2] Exhibit 1.2-SEC-77

[3] Interrogatory Response 1.2-SEC-77 references a number of other benchmarking studies, including other material that also has not been provided. Based on the description of the specific benchmarking studies, SEC is not seeking an order requiring disclosure of those non-CGA/AGA studies.

with third-parties are not a valid basis for non-production of relevant documents.[4] Most recently, in EB-2020-0007, in ordering production of benchmarking studies that were covered by a confidentiality agreement, the OEB found that it "does not accept that [disputed reports] can be withheld from intervenors or the OEB based on private agreements with third parties."[5] In making its order, the OEB cited a previous decision on this issue:

> Distributors cannot limit or exclude the Board's jurisdiction by private agreements amongst themselves or with third parties. The Board has often stated that distributors must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may be reasonably required to be produced as part of the regulatory process.[6]

The same rationale applies to Enbridge and the CGA/AGA benchmarking studies in this proceeding. The benchmarking information should be provided. The existence of a confidentiality agreement between Enbridge and the CGA/AGA may be relevant to the issue of benchmarking studies being treated as confidential pursuant to the *Practice Direction on Confidential Filings*, but it is not relevant to the requirement to disclose relevant information to Enbridge's regulator and intervenors.

2. Interrogatory 2.6-SEC-119(a)/Undertaking JT 3.16

In interrogatory 2.6-SEC-119(a)[7], SEC sought specific information regarding each community expansion project that Enbridge has undertaken. In its response, Enbridge provided some information as it relates to forecast or approved information (name of project, budgeted capital costs, 10-year customer forecast, original forecast Profitability Index, SES term), but refused to provide information regarding actual or updated information (forecast costs, actual capital costs-to-date, actual customers forecast by year, revised forecast PI based on most recent forecast costs and attachment forecast case, forecast revenue shortfall).[8]

Enbridge's refusal to provide the requested information was made on two grounds.[9]

First, the information in some instances may not be available, and in other cases requires what Enbridge says is an onerous effort extract the data, which Enbridge could not undertake within the timeframe to respond to interrogatories.

Second, actual information for community expansion projects will be reviewed after the rate-stability period has ended, which was not this application, and that the OEB had previously accepted Enbridge's proposal not to update the project PI and potentially the SES term for these projects.

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[4] For example: *Decision and Order on Confidentiality and Motion* (EB-2013-0416), August 25, 2014, p.5:

> "The Board has confirmed many times that a confidentiality agreement between a regulated utility and a service provider does not prevent the Board from requiring disclosure of information on the public record".

See also, *Procedural Order No.3*, (EB-2020-0007), February 19, 2021, p.2; *Procedural Order No.4* (EB-2013-0115), March 19, 2014, p.3; *Decision on Phase 1 Partial Decision and Order: Production of Documents* (EB-2011-0140), June 14, 2012, p.3; Motion Hearing Transcript (EB-2012-0031), October 23, 2012, p.28 *Decision on Confidentiality* (EB-2011-0123), August 19, 2011, p. 3;

[5] *Procedural Order No.3*, (EB-2020-0007), February 19, 2021, p.2

[6] *Procedural Order No.4* (EB-2013-0115), March 19, 2014, p.3

[7] Exhibit I.2.6-SEC-119a

[8] With respect to the refused information, the interrogatory points readers to the response to 1.12-FRPO-21, where a similar type, although not the same information was requested but was refused.

[9] Interrogatory Response 1.12-FRPO-21

At the Technical Conference, SEC followed up and explained that the information was not being requested for the purpose of updating the SES term in this application.[10] The benefit of the information is that it provides a window into several specific discrete projects, where Enbridge has previously provided to the OEB detailed costing and customer attachment information. SEC also notes that the previous decision reference by Enbridge says little about providing information only.[11] References to not needing to update the Profitability Index were in the context of proposals to potentially adjust the SES term.

Based on the clarification, Enbridge gave an undertaking (JT 3.16) that: "[s]ubject to data availability, Enbridge will provide responses to the portions of SEC-119, part (a) that were previously declined."[12]

To SEC's surprise, Enbridge did not provide *any* of the initially refused portions of interrogatory 2.6 SEC-119(a) in response to the Undertaking JT 3.16. It simply repeats the same basis for the initial refusal, both with respect to inability to complete within the timeframe responding to undertakings, as well as relevance of the information.

The OEB should order production of all the requested information in interrogatory 2.6-SEC-119(a).

If the issue is that the company requires further time to undertake the necessary data extraction to respond to the request, SEC does not oppose Enbridge being granted the time to do so. The information can be provided before the Settlement Conference. The information is important and can be accommodated within the time frame of the proceeding. Enbridge on its own has proposed certain updates to information before the settlement conference begins.[13]

SEC is both concerned and disagrees with the second objection made in the Undertaking Response, that of relevance. Enbridge had previously made such an objection, and then after discussion at the Technical Conference, undertook "subject to data availability" to provide the previously refused information. It is now not open to the company, after giving a legal undertaking, to refuse to provide the information on this ground. Enbridge was quite careful to provide "under advisement" undertakings[14] (which are not actually undertakings but marked as such for identification) that to allow it to consider its position further. It did not do so with respect to Undertaking JT 3.16.

With respect to the question of relevance, SEC disagrees with Enbridge's position. As previously explained, these specific projects provide the OEB with an ideal look at the progress of specific growth projects, where the full range of forecasts (both costs and revenue) were disclosed to the OEB during a leave to construct application. The requested actual and revised forecast information used in these community expansion projects are an example of Enbridge's forecasting accuracy, and expansion projects more broadly. These are matters that are clearly relevant to the application, including but not limited to, forecast additions, capital costs, and energy transition risk.

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[10] Technical Conference Transcript. March 24, p.77
[11] *Decision and Order* (EB-2020-0094), November 5, 2020, p.8
[12] Technical Conference Transcript. March 24, p.78
[13] See for example, Enbridge plans to propose a levelized recovery scenario due to the delay in-service date of the Panhandle Regional Expansion Project "by no later than the start of settlement conference in this proceeding". (See Undertaking JT 5.4). It also plans to provide an updated response to Interrogatory Response 7.0-Staff-237 in advance of the settlement conference, with updated bill impacts (See JT 8.13).
[14] See for example Undertakings JT 1.15, JT 1.17, JT 1.20, JT 1.28

We note that in response to Undertaking JT 3.17, Enbridge refused to provide the underlying information related to its Rolling Project Portfolio on the basis that, while the company does maintain the information, there are more than 1000 projects captured in individual models, and that responding would be too onerous. While SEC is not bringing a motion with respect to Undertaking JT 3.17, it only reinforces the appropriateness and relevance of providing information on this subset of projects where Enbridge has previously provided the forecast information to the OEB.

Yours very truly,
Shepherd Rubenstein P.C.

Mark Rubenstein

cc: Brian McKay, SEC (by email)
Applicant and Intervenors (by email)

AIRD BERLIS

Dennis M. O'Leary
Direct: 416.865.4711
E-mail:doleary@airdberlis.com

April 11, 2023

BY EMAIL AND FILED VIA RESS

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Marconi:

Re: Enbridge Gas Inc. ("Enbridge Gas")
EB-2022-0200 – 2024 Rates Application
Motions Day - Response from Enbridge Gas

We are counsel for Enbridge Gas Inc. ("**Enbridge Gas**").

Pursuant to Procedural Order No. 1 dated December 16, 2022, the OEB set Thursday April 13, 2023 to hear any motions that have been filed in this proceeding. Pursuant to Procedural Order No. 4 dated April 5, 2023, any party wishing to raise specific matters at the hearing was to file a letter with the OEB on or before April 10, 2023 indicating the relief sought and provide a summary of the argument supporting the relief. This Procedural Order provided that Enbridge Gas could file a written response on April 11, 2023 in advance of Motions Day.

The School Energy Coalition ("**SEC**") and Environmental Defence ("**ED**") both filed letters dated April 10, 2023 requesting that the OEB order Enbridge Gas to produce certain documentation and/or information as set out in the letters. The SEC and ED letters identify three areas where additional information/documentation is the subject of their motions.

In addition, both SEC and ED forwarded emails to Enbridge Gas requesting additional information/clarification in respect of several undertaking responses.

In summary, Enbridge Gas will, as noted in greater detail below, respond to each of the areas which are the subject of the SEC and ED motions and their requests for clarification with the exception of one.

This letter will first provide the submissions of Enbridge Gas in respect of the interrogatory response/undertaking which is in dispute. The letter will then confirm Enbridge Gas's commitment to provide responses for the two remaining requests which are the subject of the SEC and ED motions and the several additional requests for clarification by SEC and ED.

Submission on Interrogatory I.1.2-SEC-77 (CGA/AGA Benchmarking Information) and Undertakings Response JT 1.7

SEC asked in its interrogatory request for a copy of all third party benchmarking analysis, studies, reports and/or similar documents, undertaken for or including Enbridge, since 2017, that are not already included in this Application, regarding any aspect that directly or indirectly relates to a material aspect of Enbridge's business.

Enbridge Gas' response to the interrogatory is attached at **Exhibit 1** to the submission.

Enbridge Gas responded, in part by identifying that it participates in annual benchmarking studies through its membership in the Canadian Gas Association ("**CGA**") and American Gas Association ("**AGA**") (jointly "**Associations**"). The response notes that both the CGA and AGA have Confidentiality Agreements in place which require member utilities to request permission to distribute their work. Enbridge Gas requested permission to disclose the reports and both the CGA and AGA declined. Attached at **Exhibit 2** is a copy of the applicable provisions of the AGA Confidentiality Agreement and the AGA's and CGA's denial responses.

At the Technical Conference, counsel for SEC once again requested production of the AGA and CGA reports. In response, Enbridge Gas advised that it stood by the position taken in the interrogatory response.[1] SEC then requested that Enbridge Gas provide a list of what has been benchmarked and an undertaking was given to determine if Enbridge Gas was in a position to respond with such details. In its response to JT 1.7, Enbridge Gas stated that it was unable to provide the list of what is included in the annual benchmarking studies, including details of the contents of the studies. CGA however advised that there is a subset of data available in the public domain which is available on the CGA website. The undertaking response provided a link to this website. A copy of the undertaking response is attached at **Exhibit 3**.

Enbridge Gas submits that for the reasons set out below, SEC's request for the production of these benchmarking studies should be denied.

It is important to note that the AGA and CGA reports were not prepared at the request of or for Enbridge Gas. Enbridge Gas has no control over how these Associations collect data from other member utilities, how they collate the data and generate the results included in the reports. No one from Enbridge Gas can speak to the methodology used and the findings set out in the reports. None of the OEB, OEB Staff and intervenors will have any ability to test the results set out in the reports. Enbridge Gas therefore submits that there are issues around the probative value of the reports and the OEB's ability to rely on same for the purposes of making any decisions in this proceeding.

[1] 1 TC Tr.67.

In EB-2021-0312 in its Decision on Motion dated February 3, 2022, the OEB stated:

> "The OEB has considered many motions[2] where a party requested the production of information or documents, usually related to disputed interrogatory responses after the discovery stage. The OEB strives to achieve effective and efficient review processes by ensuring that only information that is relevant to the matters within the scope of the proceeding is required to be made available. The OEB will not compel the production of evidence unless the evidence is considered relevant and necessary to make determinations in the case before it."[3]

It is noteworthy that in SEC's April 10, 2023 submission, it makes no attempt to state how the AGA and CGA reports are relevant or how the contents of such reports might have any bearing on the determinations to be made on this proceeding.

The fact is that Enbridge Gas, like other member utilities of the two Associations, participates in the annual studies and receives the reports as a benefit of membership. The reports are not being relied upon by Enbridge Gas for the purposes of any relief sought in this proceeding and Enbridge Gas has agreed, as a condition of its membership, to seek the permission from the two Associations before releasing the reports. This permission was requested, but was not granted. It is arguable that producing the reports in such a situation could be considered unlawful from the perspective of the two Associations or refuse membership to Enbridge Gas.

The OEB should be aware of the possible consequence of ordering production. This could discourage the CGA from undertaking future benchmarking exercises and may disincent other utilities from participating. The AGA may decline to include Canadian utilities in its future exercises.

Enbridge Gas submits that the references made by SEC in its April 10, 2023 submission to several OEB decisions are distinguishable and not applicable to the AGA/CGA reports. First, the OEB has consistently held that production will only be made where the documentation requested is relevant to the proceeding. Second, the prior decisions of the OEB relate to a Confidentiality Agreement entered into between a regulated utility and a "service provider"[4] or private agreements amongst utilities or third parties.[5] In the case of the AGA and CGA, the requirement to obtain their permission to release the reports is a condition imposed on Enbridge Gas by its membership with the Associations. Neither Association is a service provider nor a third party in the sense intended by the OEB.

In the alternative, should the OEB determine that the benchmarking studies of the AGA and CGA should be produced, Enbridge Gas submits that the reports should be filed in confidence and a request for confidentiality is made in such circumstances. Enbridge Gas submits that confidential

[2] See, for example, EB-2018-0082, Erie Thames Powerlines Corporation and West Coast Huron Energy Inc. Application for approval to amalgamate, Decision on Motion and Procedural Order No.5, September 19, 2018 at page 6.
[3] EB-2021-0312 (MAADs proceeding re North Bay Hydro and Espanola Hydro), Decision on Motion, February 3, 2022, at page 2.
[4] EB-2013-0416, August 25, 2014 page 5.
[5] EB-2013-0115, March 19,2004 page 3.

treatment is appropriate given that the disclosure could cause potential harm to each of the Associations and their members broadly as noted above. Enbridge Gas further submits that only those reports dealing with the years following the merger of the legacy utilities (2019 to current) should be produced. Should the OEB order production of the benchmarking studies, Enbridge Gas requests the opportunity to make further submissions on confidentiality, after consulting with the Associations.

Matters where Enbridge Gas will provide Further Responses

A. Interrogatory I.2.6-SEC-19(a)/Undertaking Exhibit JT 3.16 (community expansion project information)

On this item, SEC repeats its request for Enbridge Gas to provide, subject to data availability, responses to portions of this interrogatory that were previously declined. Enbridge Gas will provide a response. If particular data is unavailable, Enbridge Gas will explain where and why that is the case.

B. Request for estimate of Test-Year System Access Spending assuming customer attachment forecast of five years and a maximum revenue horizon of 15 years (5 TC Tr. 79)

On this item, ED requests that Enbridge Gas answer a question that was declined at the Technical Conference related to providing an estimate of system access spending using different assumptions for customer connections. While Enbridge Gas does not agree with the premise of ED's position for why this information is sought, the Company will provide the requested information. Where necessary, Enbridge Gas will indicate simplifying assumptions made to complete the request.

C. Additional Clarification Requests from ED and SEC

In emails sent to Enbridge Gas on the same day as the motions letters, ED and SEC requested that Enbridge Gas provide clarifying or additional information in relation to several undertakings: Exhibits JT3.5; JT4.17; JT5.20; JT6.14 and JT8.4. Enbridge Gas confirms that it will provide updated responses to each of these undertakings, addressing the requests from ED and SEC.

Timing

Enbridge Gas will work diligently to provide all of the responses noted under the three headings above. The Company anticipates being able to provide most of the responses by Tuesday April 18th, though the work to complete item (A) above will likely take until early May. In this regard, we note SEC's comment that extra time for that response is acceptable, so long as the answer is provided before the Settlement Conference.

Yours truly,

AIRD & BERLIS LLP

Dennis M. O'Leary
DMO/vf

c: All parties registered in EB-2022-0200

EXHIBIT 1

ENBRIDGE GAS INC.

Answer to Interrogatory from
School Energy Coalition (SEC)

Interrogatory

Reference:

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Question(s):

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Response:

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- 2018 Utility Social Media Study (Union Gas)
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[1] https://www.mastio.com/_files/ugd/43ede9_733cd1117d574e6fa5dbf06fc8e7a32c.pdf.

EXHIBIT 2

Participation agreements due to AGA by December 31, 2019

2020 GAS UTILITY OPERATIONS BEST PRACTICES PROGRAM PARTICIPATION AGREEMENT FORM

♦♦♦ One Agreement Form Per Company ♦♦♦

On behalf of my company, I hereby apply to participate in the 2020 Operations Best Practices Program of the American Gas Association (AGA), and agree to submit data and other pertinent, requested information to AGA in accordance with the approved schedule.

In return for the data my company furnishes, my company and other program participants will get specific detailed information generated during the program, including program summary reports, attendance at roundtable sessions, and roundtable notes (collectively the "**Work**").

To help ensure the confidentiality of the participants' data and the **Work**, my company understands and agrees that:

- The **Work** we receive is the original, creative and copyrighted work of AGA and AGA grants my company permission to use the **Work** for internal company purposes alone. My company may not use it for any other purpose(s) nor reproduce, distribute or make derivative works from it without the specific written consent of AGA. The **Work** may not be used in rate cases or shared with regulatory commissions or other agencies.
- The **Work** is confidential and proprietary information of AGA. My company will maintain the confidentiality of the **Work**, including data provided by the participants and any coding that identifies participants, in the same manner and with the same safeguards as its internally generated confidential and proprietary information.
- In the event a governmental regulatory agency, public utility commission or any party to legal or regulatory proceedings requests a copy of the **Work** through a subpoena or document request, my company agrees to notify AGA, request permission to distribute and/or copy the **Work**, or any portion thereof, and take reasonable steps to safeguard confidentiality by requesting a confidentiality agreement, protective order, or similar protection.
- My company would receive copies of the benchmarking data reports *only* for the benchmarking topics for which my company submitted data.
- My company has reviewed the AGA Antitrust Compliance Guidelines and shall not discuss or disseminate information that violates those Guidelines.

Note: If submitting data for subsidiaries under your parent company, you are only required to submit one participation agreement for the parent company for each Program.

Company and Contact Information

PRIMARY PROGRAM CONTACT – The Company Representative primarily responsible for managing the submittal of data to the Gas Utility Operations Best Practices Program, distribution of program announcements, materials, reports and coordinating company representative attendance at the various Best Practices Meetings.

Enbridge Gas Inc.	Stephanie Fife
Company	Contact Name
Manager, Performance and Compliance	50 Keil Dr. N
Title	Street Address
Chatham ON N7M5M1	Canada
City, State, Zip	Country (if other than USA)
Stephanie.Fife@Enbridge.com	519 436 4600 x 5002321
Email Address	Phone

Dennis O'Leary

From: Murray, Michael <MMurray@aga.org>
Sent: February 22, 2023 6:59 PM
To: Kate Segriff; General Counsel
Cc: Stephanie Fife; Buys, Kenneth; Gray, LaMona
Subject: RE: [EXTERNAL] clarification needed

CAUTION! EXTERNAL SENDER
Were you expecting this email? TAKE A CLOSER LOOK. Is the sender legitimate?
DO NOT click links or open attachments unless you are 100% sure that the email is safe.

Ms. Segriff,

On behalf of Enbridge ("Company") and pursuant to a written confidentiality agreement between AGA and Company and other binding legal limitations, you have asked us for permission to distribute the AGA authored work or documents related to benchmarking analysis in response to a specific Data Request to which the Company believes the authored work or documents may be responsive.

Each operator serves a unique and defined geographic area and their system infrastructures vary widely based on a multitude of factors, including, condition, engineering practices and materials. Each operator will need to evaluate any practices in light of system variables. Not all highlighted practices will be applicable to all operators due to the unique set of circumstances that are attendant to their specific systems. Each operator needs to evaluate actions in light of system variables. Any benchmarking results are not standards or necessarily the best practice for any particular company.

As the Company is aware as an AGA member, AGA is a nonprofit tax-exempt 501(c)(6) membership organization that is incorporated and conducts business at Suite 450, 400 N. Capitol St., N.W., Washington, DC, 20001. One of AGA's purposes as an association is to serve its members' collective interests and not the interests of any single member. As such, many documents are aimed, among other things, at improving operational excellence, safety, security and efficiency throughout the natural gas distribution industry. These publications are copyrighted and a valued benefit of membership in the association.

Certain AGA documents are for public distribution while others are confidential and proprietary and distributed through the password-protected members only side of the AGA web site at www.aga.org, a third-party contractor's password protected website, or limited hard copy or email distribution and/or subject to a confidentiality agreement between AGA and the members participating in the development of the document. The documents you indicate may be responsive to the data request are of the confidential and proprietary type and AGA uses the measures noted to safeguard that confidentiality.

For the reasons stated above and because the authored work and documents are confidential and propriety to AGA, distributed solely to AGA members, copyrighted to AGA, and subject to a confidentiality agreement between AGA and the members participating in the development of the documents, including the Company, and other binding legal limitations, AGA cannot grant the permission you request.

Respectfully yours,

Michael Murray | General Counsel
American Gas Association
400 N. Capitol St., NW | Washington, DC | 20001
P: 202-824-7071 | mmurray@aga.org

From: Derek Chan <DChan@cga.ca>
Sent: Monday, February 27, 2023 9:10 AM
To: Kate Segriff <Kate.Segriff@enbridge.com>
Cc: Deborah Pfeil <DPfeil@cga.ca>
Subject: [External] RE: Urgent request

CAUTION! EXTERNAL SENDER
Were you expecting this email? TAKE A CLOSER LOOK. Is the sender legitimate?
DO NOT click links or open attachments unless you are 100% sure that the email is safe.

Hi Kate,

Just a reminder that there is a public facing document for the Corporate Profile available on the CGA website here: https://www.cga.ca/resources/publications/corporate-profile/. Granted it is only a subset of the information that companies like Enbridge submit to us, this information is in the public domain.

Having said that, the statement that I would use comes from the second page of the document itself:
"INFORMATION CONTAINED IN THIS REPORT IS NEITHER AUDITED NOR WARRANTED, IS NOT SUBJECT TO PEER REVIEW & IS NOT INTENDED FOR USE IN REGULATORY OR FINANCIAL FILINGS. NO GUARANTEES ARE MADE REGARDING REFLECTING HISTORICAL REVISIONS OR CORRECTIONS"

Hope this helps. Let me know if you have any other questions.

Regards,

Derek Chan, P.Eng
Manager, Data Analytics and Operations
Canadian Gas Association
P: 613-748-0057 ext. 315 | M: 519-381-3354
dchan@cga.ca

From: Kate Segriff <Kate.Segriff@enbridge.com>
Sent: February 24, 2023 10:54 AM
To: Derek Chan <DChan@cga.ca>
Cc: Deborah Pfeil <DPfeil@cga.ca>
Subject: Urgent request

EXTERNAL EMAIL: Verify sender, proceed only if safe.

Hi Derek.

Can you please outline in a paragraph or so why we cannot share the CGA Company Profile data from other member companies or anything we benchmark with our Financial Regulator like QSS's etc? They are looking to hear it from the source, not just us, we had to do the same thing with the AGA.

EXHIBIT 3

ENBRIDGE GAS INC.

Answer to Undertaking from
School Energy Coalition (SEC)

Undertaking

Tr: 68

With Mr. O'Leary's caveats to the inquiry, to provide a copy of the annual benchmarking studies from the CGA and the AGA, as well as those listed; to provide a list of what is benchmarked, what is actually the contents of those benchmarking studies.

Response:

As outlined in response at Exhibit I.1.2-SEC-77, Enbridge Gas is unable to provide the list of what is included in the annual benchmarking studies, including details of the contents of the studies. The AGA did not grant Enbridge Gas permission to provide the list of what is benchmarked as all of the information in the program is covered by a confidentiality agreement. The CGA indicated that there is a subset of data available in the public domain that can be found on the CGA website[1]. The remainder of the information in the CGA Program is covered by a confidentiality agreement.

[1] Corporate Profile 2021 Final Report. 2022. https://www.cga.ca/wp-content/uploads/2022/10/Corporate-Profile-2021.pdf

Ontario Energy Board | Commission de l'énergie de l'Ontario

Ontario Energy Board

Rules of Practice and Procedure

Document Updates

Date	*Description of Changes*
April 1, 2023	Revisions to Rule 22 and new Appendices A and B
December 17, 2021	Revisions consequential to revisions to the Practice Direction on Confidential Filings
July 30, 2021	Revisions related to Rules 40-43 dealing with motions to review, and administrative changes relating to definitions and general principles of interpretation.
February 17, 2021	Updated for the OEB's new governance under the *OEB Act*, for changes due to the digitization of records and other, predominantly administrative/housekeeping, changes
October 28, 2016	Revisions consequential to revisions of the Practice Direction on Settlement Conferences
April 24, 2014	Revisions resulting from the Consultation to Review the Framework Governing the Participation of Intervenors in Board Proceedings
January 17, 2013	Revisions related to applications under section 36.2 of the *Electricity Act, 1998* to review reliability standards
January 9, 2012	Addition of a new Rule relating to expert evidence
October 13, 2011	Revisions related to the filing of personal information
July 14, 2008	Added new rule for appeals by the IESO with respect to electricity reliability standards. Made a number of other, predominantly administrative/housekeeping, changes related to amendments made to the *OEB Act*
November 16, 2006	Revisions related to confidential filings

Revised April 1, 2023

2300 Yonge Street, 27th floor, P.O. Box 2319, Toronto, ON, M4P 1E4
2300, rue Yonge, 27e étage, C.P. 2319, Toronto (Ontario) M4P 1E4
T 416-481-1967 1-888-632-6273
F 416-440-7656 **OEB.ca**

v. if a supplementary round of interrogatories is ordered, the "interrogatory number for that party" remains sequential for that party and the suffix "s" is added to the interrogatory number;

(f) be filed and served as directed by the OEB; and

(g) set out the date on which they are filed and served.

27. Responses to Interrogatories

27.01 Subject to **Rule 27.02**, where interrogatories have been directed and served on a party, that party shall:

(a) provide a full and adequate response to each interrogatory;

(b) group the responses together according to the issue to which they relate;

(c) repeat each question at the beginning of each response;

(d) respond to each interrogatory on a separate page or pages;

(e) number the responses as described in **Rule 26.02(e)**;

(f) specify the intended witness, witnesses or witness panel who prepared the response, if applicable;

(g) file and serve the response as directed by the OEB; and

(h) set out the date on which the response is filed and served.

27.02 A party who is unable or unwilling to provide a full and adequate response to an interrogatory shall file and serve a response:

(a) where the party contends that the interrogatory seeks information that is not relevant, setting out specific reasons in support of that contention;

(b) where the party contends that the information necessary to provide an answer is not available or cannot be provided with reasonable effort, setting out the reasons for the unavailability of such information, as well as any alternative available information in support of the response; or

(c) otherwise explaining why such a response cannot be given.

A party may request that all or any part of a response to an interrogatory be held in confidence by the OEB in accordance with **Rule 10**.

27.03 Where a party is not satisfied with the response provided, the party may bring a motion seeking direction from the OEB.

27.04 Where a party fails to respond to an interrogatory made by OEB staff, the matter may be referred to the OEB.

28. Identification of Issues

28.01 The OEB may identify issues that it will consider in a proceeding if, in the opinion of the OEB:

(a) the identification of issues would assist the OEB in the conduct of the proceeding;

(b) the documents filed do not sufficiently set out the matters in issue at the hearing; or

(c) the identification of issues would assist the parties to participate more effectively in the hearing.

28.02 The OEB may direct the parties to participate in issues conferences for the purposes of identifying issues, and formulating a proposed issues list that shall be filed within such a time period as the OEB may direct.

28.03 A proposed issues list shall set out any issues that:

(a) the parties have agreed should be contained on the list;

(b) are contested; and

(c) the parties agree should not be considered by the OEB.

28.04 Where the OEB has issued a procedural order for a list of issues to be determined in the proceeding, a party seeking to amend the list of issues shall do so by way of motion.

29. Settlement Conferences

29.01 The OEB may direct that participation in settlement conferences be mandatory.

29.02 A settlement conference shall be open only to parties and their representatives, unless the OEB directs or the parties agree otherwise.

29.03 A Commissioner shall not participate in a settlement conference, and the conference shall not be transcribed or form part of the record of a proceeding.

29.04 The OEB may appoint a person to act as a facilitator at a settlement conference.

29.05 The chair of a settlement conference may enquire into the issues and shall attempt to effect a comprehensive settlement of all issues or a settlement of as many of the issues as possible.

Ontario Energy Board

Commission de l'énergie de l'Ontario

Handbook
for
Utility Rate Applications

October 13, 2016

- Operational Effectiveness: Utilities are expected to demonstrate ongoing continuous improvement in their productivity and cost performance while delivering on system reliability and quality objectives. The OEB will assess performance trends and look for evidence of strong system planning and good corporate governance. The OEB will use benchmarking to assess a utility's performance over time and to compare its performance against other utilities. Utilities are expected to demonstrate value for money by presenting plans for delivering services that meet the needs of their customers while controlling their costs.

- Public Policy Responsiveness: Utilities are expected to consider public policy objectives in their business planning and to deliver on the obligations required of regulated utilities. These obligations may evolve over time and therefore this Handbook does not provide a comprehensive list of all requirements. Utilities are expected to demonstrate that they have considered Conservation First[6] in their investment decisions. The OEB will expect to see proposals for how distributors are supporting low income customers through programs such as LEAP and/or OESP[7], or through other distributor-specific programs. Electricity distributors and transmitters are expected to expand or reinforce their systems to accommodate the connection to their system for renewable energy generation facilities and the OEB expects their system plans to include details on how they will meet this requirement. Natural gas utilities are expected to identify investments or programs that have been planned to meet obligations under Ontario's cap and trade program.

- Financial Performance: Utilities are expected to demonstrate sustainable improvements in their efficiency and in doing so will have the opportunity to earn a fair return. The OEB will monitor the financial performance of each utility to assess continuing financial viability and to determine whether returns are excessive. Utilities have a choice of rate-setting methods to meet their particular needs. Additional tools are available to support infrastructure investment. Utilities must report comprehensive and consistent information, allowing for comparisons over time and across utilities. The OEB will act on its obligations to ensure a financially viable sector where performance indicates that a regulatory response is needed.

[6] Conservation First is a government policy referred to in the Long-Term Energy Plan.
[7] Low Income Energy Assistance Program (LEAP) and Ontario Electricity Support Program (OESP).

5. The OEB's Review of the Key Components of Rate Applications

One of the OEB's primary goals is to ensure that utilities are delivering cost effective, efficient, reliable and responsive services to customers. The RRF is intended to elevate utility performance by creating incentives for superior performance. The RRF focuses on increased effectiveness and continuous improvement in meeting customer needs, including cost control and system reliability and quality objectives.

A utility's proposals are expected to demonstrate the alignment of the utility's strategic objectives with its current and future customers' expectations for reliable and reasonably priced service. The utility is expected to integrate its business challenges, and what its customers are saying, to create a compelling business plan that directly links to proposals included in the rate application and the four performance outcomes of customer focus, operational effectiveness, public policy responsiveness, and financial performance. In reviewing utility proposals, the OEB will analyze past performance but is even more concerned with future performance. The Ontario energy sector has gone through significant change, and even more change is expected in the future, particularly technology-driven change which has the potential to deliver significant benefits to customers.

The OEB will use a variety of tools to aid its review work, including trend analysis, cost benefit analysis, reviews of distributor due diligence processes (planning, risk management, governance, etc.), benchmarking and other analytical tools. The OEB sets just and reasonable rates based on a total revenue requirement that is informed by an assessment of a utility's spending proposals. If the OEB determines that a specific project or program has not been adequately justified, this may result in a reduction to the requested revenue requirement. It is the utility's responsibility to operate its system, and undertake the projects and programs it needs to meet performance requirements, within the funding provided through rates. This provides the utility with the responsibility and flexibility to meet its obligations in ways which benefit customers and the utility.

as would be in a cost of service or Custom IR application. Any Incremental Capital Module that involves a significant increase to a capital budget may need to be supported by a DSP along with customer engagement analysis.

In reviewing the utility system plan, the OEB will consider the following:

- **Have the criteria outlined in Chapter 5 of the *Filing Requirements for Electricity Rate Applications* been addressed?**
- **Does the plan provide a direct and clear alignment of the various components, explicitly showing how the process steps lead to an optimized plan and corresponding capital and operational plans and budgets?**
- **How has the plan addressed the information and preferences gathered from the utility's customer engagement work?**
- **Does the plan deliver quantifiable benefits for customers?**
- **Does the plan support the achievement of the utility's identified outcomes, and the outcomes of the RRF (customer focus, operational effectiveness, public policy responsiveness, and financial performance)?**
- **Has the company controlled costs through optimization, prioritization and pacing?**
- **Has the plan appropriately integrated conservation, renewable generation connection, regional plans, smart grid, and any relevant public policies?**

Outcomes and Performance Metrics

The RRF is an outcomes-based approach. A utility is accountable for identifying specific outcomes valued by its customers and explaining how the utility's plans and proposed expenditures deliver those outcomes. These outcomes are linked to performance metrics, which will be used to show whether the outcomes have been achieved. Utilities are expected to consider cost trends, benchmarking of comparable utilities, and learnings from their customer engagement in setting outcomes and performance metrics.

Outcomes are not activities such as the rebuilding of a pole line, but rather the qualitative expression of the utility's goals and objectives. The outcomes should be based on the utility's business plan and should identify outcomes at the key program level that flow directly from the cost proposals. The outcomes should demonstrate the value proposition for customers and/or public policy goals. Effective outcomes, in combination with the materiality thresholds, will allow the OEB to focus its assessment on results that drive value for customers and not a line by line review of expenditures. The OEB has set four categories of outcomes through the RRF: customer focus, operational effectiveness, public policy responsiveness, and financial performance.

Benchmarking

Benchmarking will be used by the OEB to review a utility's proposals, including at the program level[13]. Utilities are expected to provide benchmarking analysis which supports their proposed plans and programs and demonstrates continuous improvement.

The OEB currently conducts total cost benchmarking for electricity distributors. An econometric model is used to generate efficiency rankings and assign electricity distributors to one of five groups based on their total cost performance, including both capital and OM&A costs. These results are used to set the productivity stretch factors for the incentive rate-setting mechanism (IRM) applications, and will also be a consideration in assessing a utility's cost trend performance. An electricity distributor is expected to provide a forecast of its efficiency assessment using the model for the test year. This provides the OEB with a directional indicator of efficiency.

Utilities are generally not required to present total cost benchmarking analysis as part of their applications, unless they have been ordered to do so through an OEB decision. Two other types of benchmarking are required in rate applications:

- External benchmarking to analyze specific measures or specific programs by comparing year over year performance against key metrics and/or comparing unit costs (or other measures) against best practice benchmarks amongst a comparator group
- Internal benchmarking to assess continuous improvement by the utility over time

Benchmarking need not be limited to unit cost benchmarking (e.g. the capital cost of a billing system per customer or the cost of cable or pipe per km). Performance benchmarking in areas such as reliability or other outcomes may also be appropriate. What is important is that the utility explains how it has interpreted the benchmarking and what actions it has taken as a result of it.

With the Custom IR rate setting options, a utility can customize the rate setting mechanism for their specific circumstances. Given this flexibility, the OEB will place greater reliance on benchmarking evidence for a Custom IR application to assess proposals over the five year term. When determining what areas to benchmark, a utility should consider the following potential criteria:

[13] Such as cost per pole replacement or billing costs per customer

- Key areas where the utility's performance is considered particularly strong or particularly weak
- Areas where expenditures are a key driver for the revenue requirement
- Areas that have been targeted for specific programs
- Areas where the OEB has expressed concern in past decisions
- Areas related to performance metrics and/or performance scorecard measures
- Linkages to customer engagement analysis

Utilities are expected to present objective, well researched benchmarking information, supported by a high quality and thorough analysis (using either third party or internal resources) that can be rigorously tested.

In reviewing benchmarking, the OEB will consider:

- **The structure of the benchmarking and the comparators used**
- **The quality of the benchmarking**
- **The linkages between the results of the benchmarking and the proposals in the rate application**

OM&A and Compensation Expenses

Under the RRF, the OEB has adopted an outcomes-based approach to regulation. As a result, the review of OM&A expenses will focus on the examination of outputs and programs, and whether there is evidence of continuous improvement, rather than the discrete line items or inputs to the OM&A budgets.

In addition, because employee compensation costs are already reflected in the proposed capital and operational programs, a detailed presentation of compensation is not necessary for the OEB's consideration of the proposed program costs to achieve the expected outcomes. The OEB does expect a utility to provide a description of its compensation strategies and policies (e.g. how salary scales are set and reviewed, how target salaries are compared to external benchmarks, performance pay structures, and the board of directors oversight process) and to clearly explain the reasons for all material changes to head count and compensation, and the outcomes expected from these changes. A utility should demonstrate clearly the linkages between its compensation strategies and policies and utility performance. Additional requirements for particular utilities may also arise from specific OEB directions in prior proceedings.

EB-2013-0115

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Burlington Hydro Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2014.

PROCEDURAL ORDER NO. 4
March 19, 2014

Burlington Hydro Inc. ("Burlington Hydro") filed a complete cost of service application with the Ontario Energy Board (the "Board") on October 25, 2013 under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, seeking approval for changes to the rates that Burlington Hydro charges for electricity distribution, to be effective May 1, 2014.

On March 11, 2014, the School Energy Coalition ("SEC") filed a Notice of Motion ("Motion"). The Motion seeks the following relief:

1. An order requiring Burlington Hydro to provide a full and adequate response to interrogatory 2.1-SEC-5 and/or 2.1-SEC-4, by producing the benchmarking survey it participated in, and is referred to in the response to interrogatory 2.1-SEC-5.
2. Such further and other relief as the SEC may request and the Board may grant.

In response to SEC-5 Burlington Hydro referenced a benchmarking survey ("the Benchmarking Survey") but stated that it was bound by contract to neither disclose the survey nor any details about it unless ordered by the Board.

On March 12, 2014, the Board issued Procedural Order No. 3 which, among other things, established an expedited schedule for Board staff and intervenors to file submissions on the Motion, for Burlington Hydro to file a response, and for SEC to file supporting material, if required, and a reply submission. The Board indicated that it would issue a decision on the Motion by the end of day Tuesday March 18, 2014.
On March 14, 2014 Board staff submitted that SEC's request for the Benchmarking Survey is clearly within the scope of the current proceeding, as it pertains to Issue 2.1 of the Issues List and benchmarking is a core component of the Board's Renewed Regulatory Framework for Electricity Distributors (RRFE). Board staff submitted that Burlington Hydro should be required to produce the Benchmarking Survey and that the document should be designated as confidential on an interim basis in order to determine its relevance. Board staff also noted that in previous Board decisions, the Board has not accepted a party's confidentiality agreement with a third party as a basis for withholding documents or information.

On March 17, 2014, Burlington Hydro submitted that the Board should consider the specific circumstances of this case. While acknowledging that the Board has the authority to order production of documents, despite the existence of a contractual obligation on the regulated utility to refrain from disclosure, Burlington Hydro submitted that the circumstances in this case were materially different from the examples cited by SEC and Board staff. Specifically, the Board should consider that:

- Burlington Hydro did not conduct the survey, but was only a participant;
- Burlington Hydro only became a participant and obtained copies of the survey as a result of entering into a contract preventing it from disclosing the details; and
- The survey is not central to the application; Burlington Hydro did not refer or rely on the survey in its application or interrogatory responses, except to be truthful about its participation in the survey.

Regarding the relevance of the information contained within the survey, Burlington Hydro submitted that, in its view, the Board's reliance on benchmarking as noted in the RRFE Report and the Scorecard Approach Report relates to Board initiated benchmarking. Burlington Hydro submitted that while third party benchmarking material may be useful, the Board's interest should not be taken as a carte blanche directive to produce all benchmarking material regardless of the circumstances.

Burlington Hydro submitted that, should such contractual obligations be consistently ignored by the Board, utilities would have their access to third party information, for any use, severely restricted.

On March 18, SEC noted the Board's past approach, wherein a document should be disclosed if it is relevant, and its probative value will outweigh any prejudicial effects. SEC submitted that the fact that Burlington Hydro did not rely on the Benchmarking Survey in preparing its application does not determine the relevance of the document. SEC further submitted that the Board's standard for ordering the production of evidence is not reliance but relevance, and that the Board takes a fairly broad view of relevance. SEC submitted that interrogatories allow for the provision of information in addition to that filed, and that the document is relevant to the proceeding in that the Issues List contains a specific question regarding performance benchmarking. SEC noted that, although Burlington Hydro had individually addressed the differences between this case and those cited in parties' submissions, it had not provided a single case where the relevant document was not produced due to a third party non-disclosure agreement.

In response to Burlington Hydro's submission that access to third party information would be restricted if contractual obligations are ignored, SEC suggested that the opposite is a more likely scenario, due to a clear signal from the Board that it will be relying on an outcomes-based approach that involves benchmarking in the regulation of electricity distribution rates. SEC submitted that the probative value of the document outweighs the potential prejudicial effects, in that such surveys allow the Board to properly determine key issues in this proceeding and that benchmarking is an accepted method to determine if the proposed rates meet the statutory requirement of being "just and reasonable". SEC submitted that this is important information, paid for by ratepayers, about Burlington Hydro's regulated costs and that its probative value outweighs any prejudicial effects.

Finding

Burlington Hydro shall immediately provide the Benchmarking Survey referred to in its response to 2.1-SEC-5 to qualifying parties that have executed a Declaration and Undertaking pursuant to s.6.1 of the Board's *Practice Direction on Confidential Filings* ("the *Practice Direction*").

Distributors cannot limit or exclude the Board's jurisdiction by private agreements amongst themselves or with third parties. The Board has often stated that distributors must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may be reasonably required to be produced as part of the regulatory process. The Board finds that benchmarking surveys fall squarely into that category particularly under the Board's Renewed Regulatory Framework for Electricity Distributors. Benchmarking information is also specifically important in addressing Issue 2.1 in the Board approved issues list.

The Benchmarking Survey will be treated as confidential on an interim basis, and will be included among the documents designated as the Proposed Confidential Material in Procedural Order No. 3. Parties may make submissions on the confidentiality status of the Proposed Confidential Material in accordance with the schedule set out in Procedural Order No. 3.

The Board considers it necessary to make provision for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD ORDERS THAT:

1. Burlington Hydro shall immediately provide unredacted versions of the Benchmarking Survey referred to in its response to 2.1-SEC-5 to all qualified parties that have executed a Declaration and Undertaking pursuant to the Board's *Practice Direction*.
2. Parties shall make submissions on the confidentiality status of the Proposed Confidential Material and Burlington Hydro's proposal to retract the information if it is not afforded confidential status in accordance with the schedule established in Procedural Order No. 3.
3. Parties shall frame submissions related to the Proposed Confidential Material in a manner that will allow the submissions to be placed on the public record.

All filings to the Board must quote the file number, EB-2013-0115, be made through the Board's web portal at https://www.pes.ontarioenergyboard.ca/service/, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and

document submission standards outlined in the RESS Document Guideline found at http://www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martha McOuat at martha.mcouat@ontarioenergyboard.ca and Board Counsel, Ljuba Djurjevic at ljuba.djurjevic@ontarioenergyboard.ca.

ADDRESS

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Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **March 19, 2014**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Ontario Energy Board | Commission de l'énergie de l'Ontario

EB-2020-0007

Burlington Hydro Inc.

Application for electricity distribution rates beginning May 1, 2021

PROCEDURAL ORDER NO. 3
February 19, 2021

Burlington Hydro Inc. (Burlington Hydro) filed a cost of service application with the Ontario Energy Board (OEB) on October 30, 2020, under section 78 of the *Ontario Energy Board Act*, *1998*, seeking approval for changes to the rates that Burlington Hydro charges for electricity distribution, beginning May 1, 2021.

In responses to interrogatories 1-SEC-2 and 4-Staff-53, parts (a) and (d), Burlington Hydro indicated that it was unable to provide the following three reports because it had entered into non-disclosure agreements with the report providers:

1. 2020 MEARIE Management Salary Survey (Report 1)
2. Korn Ferry 2019 Management and Non-Union Employee Pay Report (Report 2)
3. 2016 Willis Towers Watson Incentive Program Review (Report 3)

School Energy Coalition (SEC), one of the OEB-approved intervenors in this proceeding, requested Burlington Hydro reconsider its position and provide copies of these three reports as soon as possible.

By a letter dated February 17, 2021, Burlington Hydro filed a redacted version of Report 3 on the public record. Burlington Hydro stated that the redacted information related to incentive pay associated with specific positions. In Burlington Hydro's view, the redacted information from Report 3 constitutes "personal information" as defined in the *Freedom of Information and Protection of Privacy Act* (FIPPA) and thus should not be provided to any party, including a person who has provided a Declaration and Undertaking pursuant to the OEB's *Practice Direction on Confidential Filings* (Practice

Direction)[1]. Regarding Reports 1 and 2, Burlington Hydro stated that it was prepared to file these reports in confidence but did not receive consent from the report providers.

By a letter dated February 18, 2021, SEC wrote to the OEB requesting Burlington Hydro be ordered to file copies of Reports 1 and 2 on the record in this proceeding, preferably before the commencement of the Settlement Conference beginning on Monday, February 22, 2021. SEC stated that the OEB has said on numerous occasions that non-disclosure agreements are not a valid basis for non-disclosure of relevant documents. SEC further stated that it did not object to Reports 1 and 2 being treated as confidential pursuant to the Practice Direction on an interim basis.

Findings

As soon as possible, Burlington Hydro shall file with the OEB, and provide to intervenors that have executed a Declaration and Undertaking, copies of Reports 1 and 2. Consistent with the Practice Direction, the copies of Reports 1 and 2 provided to (i) the OEB should be unredacted; and (ii) intervenors should be redacted to remove any "personal information" (if applicable). In the covering letter providing Reports 1 and 2 to the OEB, Burlington Hydro should identify the parts of the Reports for which confidential treatment is sought and provide its submissions as to why confidential treatment for such information is appropriate. The cover letter is to be filed on the public record and provided to all intervenors.

In a previous proceeding involving Burlington Hydro, the OEB explained that:

> Distributors cannot limit or exclude the Board's jurisdiction by private agreements amongst themselves or with third parties. The Board has often stated that distributors must be cognizant of this when entering into confidentiality agreements with third parties that extend to the provision of information and documents that the utility knows or ought to know may be reasonably required to be produced as part of the regulatory process.[2]

The same reasoning applies in this proceeding. The OEB does not accept that Reports 1 and 2 can be withheld from intervenors or the OEB based on private agreements with third parties.

[1] Practice Direction on Confidential Filings, October 28, 2016, Page 6
[2] EB-2013-0115, Burlington Hydro Inc., Procedural Order No.4, March 19, 2014, page 4.

Given that there may confidential information within Reports 1 and 2, these two reports are to be treated as confidential on an interim basis. This will provide parties an opportunity to make submissions on the confidentiality claims. Any submissions from parties on the confidentiality claims of Reports 1-3 should be filed in accordance with the schedule set out in the OEB's Decision on Issues List and Procedural Order No. 2 (Procedural Order No.2).

It is necessary to make provision for the following matters related to this proceeding. Further procedural orders may be issued by the OEB.

IT IS THEREFORE ORDERED THAT:

1. Burlington Hydro shall file with the OEB Reports 1 and 2 in full as soon as possible.

2. Burlington Hydro shall provide copies of Reports 1 and 2 to intervenors that have executed a Declaration and Undertaking as soon as possible. Burlington Hydro shall redact any "personal information" contained in Reports 1 and 2 from the copies to be provided to intervenors.

3. Parties that wish to file written submissions on the confidentiality requests (five interrogatories identified in Procedural Order No. 2 and three reports identified in this Procedural Order No.3) from Burlington Hydro shall file such submissions with the OEB and deliver them to all other parties on or before **February 26, 2021**.

4. If Burlington Hydro wishes to file a reply to any submissions of parties on the confidentiality requests (five interrogatories identified in Procedural Order No. 2 and three reports identified in this Procedural Order No.3), the reply submissions must be filed with the OEB and delivered to all parties on or before **March 5, 2021**.

All materials filed with the OEB must quote the file number, **EB-2020-0007**, and be submitted in a searchable/unrestricted PDF format with a digital signature through the OEB's web portal at https://p-pes.ontarioenergyboard.ca/PivotalUX/. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the Regulatory Electronic Submission System (RESS) Document

Guidelines found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet set up an account, may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Shuo Zhang, at Shuo.Zhang@oeb.ca and OEB Counsel, Lawren Murray, at Lawren.Murray@oeb.ca.

Email: registrar@oeb.ca
Tel: 1-888-632-6273 (Toll free)
Fax: 416-440-7656

DATED at Toronto, **February 19, 2021**

ONTARIO ENERGY BOARD

Original signed by

Christine E. Long
Registrar

Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2013-0416

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2015, each year to December 31, 2019.

DECISION AND ORDER
ON
CONFIDENTIALITY AND MOTION

August 25, 2014

Hydro One Networks Inc. ("Hydro One") filed a cost of service rate application with the Ontario Energy Board (the "Board") on December 19, 2013 under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Hydro One charges for electricity distribution, to be effective January 1, 2015 and each year thereafter to December 31, 2019. The Board issued a Notice of Application and Hearing dated January 24, 2014. Hydro One supplemented its application with additional material filed January 31, 2014 and with an evidence update filed on May 30, 2014.

This decision and order deals with two matters: Hydro One's request for certain documents filed in the proceeding to be held in confidence, and a motion filed by an intervenor, the School Energy Coalition ("SEC"). Through Procedural Orders 4 and 5, the Board made provision for argument to be filed regarding Hydro One's request for confidential treatment, and on the SEC motion. All filings related to the request and the motion are available on the Board's website under file EB-2013-0416.

1. Request for Confidential Treatment

It is the Board's general policy that the record of a proceeding should be open for inspection by any person unless disclosure of information is prohibited by law. The Board's proceedings should be open, transparent and accessible. Placing materials on the public record is the rule and confidentiality is the exception, and the onus is on the person requesting confidentiality to demonstrate why confidentiality is appropriate. The Board's *Practice Direction on Confidential Filings* seeks to balance this principle with the need to protect information that has been properly designated as confidential. By letter dated July 17, 2014 Hydro One listed and described eight documents for which it was seeking confidential treatment. The Board, and counsel and consultants for intervenors who have signed the Board's Declaration and Undertaking, have received copies of these documents. The intervenor Energy Probe Research Foundation ("Energy Probe") was the only party that filed a response to the request.

a) Financial information protected by securities law

For the first three documents (attachments to the interrogatories 1.1 CCC 3, 1.1 SEC 1 and 2.6 Staff 36), Hydro One requested confidentiality on the basis that the documents contained non-public, forward-looking financial information that securities law requires be kept confidential. As indicated in section 6 of Appendix B of the Board's *Practice Direction*, the Board generally accords confidential treatment to such information, and will do so in this case.

b) IHS reports

The next four documents, provided as attachments to interrogatory 2.6 SEC 8, were described as non-public, proprietary reports prepared for Hydro One by a third party, IHS. A letter from IHS, attached to Hydro One's submission on confidentiality dated August 8, 2014, indicated that the reports contain a model which is exclusive and proprietary to IHS, represents significant work by IHS, and has considerable commercial value. While IHS consents to the disclosure of the model to the Board and parties to the hearing, public disclosure of the model would result in financial injury to IHS and cause that company to suffer a competitive disadvantage.

Energy Probe, opposing the request for confidential treatment of the reports, argued that the forecast filed in confidence has been superseded by a later forecast and has therefore questionable commercial value.

The Board will grant confidential treatment to the IHS reports. The Board accepts that the reports contain a proprietary model belonging to a third party, which if publicly disclosed could cause financial and competitive harm to that party.

c) Outsourcing RFP

The final item for which Hydro One sought confidential treatment in its letter of July 17 was an outsourcing Request for Proposals requested in interrogatory 3.1 SEC 22. Initially, Hydro One declined to provide the RFP, on the basis that it does not contain cost information but contains sensitive information about the utility which was provided only to pre-screened applicants. However, in its submission of August 8, Hydro One indicated it would file a copy of the RFP, and requested confidential treatment for the document.

Energy Probe submitted that the RFP should remain confidential only until the result of the outsourcing process is complete. Hydro One responded that the document contains commercial and technical material, public disclosure of which at any time would compromise the security of Hydro One's operations. Hydro One further submitted that the document had little probative value to the proceeding.

While the Board appreciates the need for confidential treatment of information which would compromise the security of a utility, the principle that information should be placed on the public record unless such disclosure is prohibited by law is important in maintaining the integrity of Board processes. The Board will require Hydro One to file on the public record a copy of the RFP, once the RFP process is complete, having removed information that would actually compromise security.

2. SEC Motion

The motion, filed by SEC on July 29, 2014, sought the production from Hydro One of documents that were not provided, or provided only in redacted form, in answer to certain interrogatories.

a) Customer satisfaction study

In response to interrogatory 2.6 Energy Probe 23(b), Hydro One filed copies of a customer satisfaction benchmarking study that it had commissioned. The names of utilities used as comparators were redacted. Hydro One submitted that the identities of the other utilities should not be provided, even on a confidential basis. Hydro One's pollster surveyed the customers of the utilities without the knowledge of those utilities, and Hydro One submitted that disclosure of the utility names would deter future benchmarking, and harm Hydro One's relationship with those utilities. Further, Hydro One submitted that the identity of the utilities is not relevant, as only Hydro One's relative performance to the peer group is needed for the Board and parties to understand the results of the surveys.

SEC submitted that the identities of the comparator utilities is relevant to allow the Board and parties to understand what organizations Hydro One is treating as comparators, and the appropriateness of that comparison. SEC argued that the absence of consent from the other utilities is no reason to refuse disclosure, as a pollster has the right to contact and survey customers in any utility's service territory if the customers agree to participate. No information belonging to the other utilities was included in the study, and the utilities would have no claim to confidentiality over the information provided by customers.

The Board finds that the identity of the utilities whose customer satisfaction was compared to that of Hydro One is relevant. Where benchmarking evidence is provided, it is important to understand whether the peer group selected provides an appropriate basis for comparison to the target utility. However, the Board finds that attribution of the results to a specific utility, other than Hydro One, is not necessary. The Board will therefore not require Hydro One to file an unredacted version of the study. The Board requires Hydro One to file, as a supplement to interrogatory 2.6 Energy Probe 23b, a list of the comparator utilities used in the study.

Energy Probe submitted that the identity of the peer group should remain confidential. The Board will provide confidential treatment for the list of comparator utilities.

b) Benchmarking study of Inergi fees

In response to interrogatories 3.1 SEC 21, 4.2 Staff 63a and 4.2 Energy Probe 33a Hydro One filed a copy of an ISG benchmarking review of Inergi fees, with the fee and unit cost amounts redacted. Hydro One indicated that disclosure of pricing would harm Hydro One in regard to its negotiations with other vendors, and harmful to Inergi's relationships with its other customers. Further, Hydro one submitted that the actual unit pricing of outsourced services is unnecessary, as aggregate spending information has been filed on the record.

Hydro One filed a letter from Inergi, which objected to the disclosure of the document, even on a confidential basis, except as redacted by Inergi. Inergi stated that disclosure of the redacted pricing information would be irreparably harmful to Inergi's relationship with its customers, and prejudice significantly its competitive position in future competitions for business. Inergi argued that the redaction of the unit costs does not alter the meaning of the study, as the benchmarking methodology and conclusions are available to all parties.

SEC argued that the redacted version of the study is not adequate as it does not show the numbers which are the underlying basis for the conclusions of the study. The fact that Hydro One has a confidentiality agreement with Inergi, or that Inergi objects to the release of the redacted information, does not remove Hydro One's obligation under the Board's *Practice Direction* to produce an unredacted copy of the study and seek confidential treatment if it chooses to do so.

The Board has confirmed many times that a confidentiality agreement between a regulated utility and a service provider does not prevent the Board from requiring disclosure of information on the public record. The fact that the ISG benchmarking study is subject to confidentiality restrictions in the service agreement between Hydro One and Inergi is not a sufficient reason for accepting a redacted version of the report. The Board finds merit in the argument that the unit prices and other figures which are the foundation of the conclusions of the study are necessary for a full understanding of the results. The Board will require Hydro One to refile the study with pages 7, 21 and 22 of the slide deck unredacted. The Board does not require that the redacted names and signatures be provided.

The Board will provide confidential treatment for the refiled study. Energy Probe argued that the majority of the redacted information should appear on the public record. However, the Board recognizes the concerns of Inergi regarding public dissemination of unit price information, and will keep this information confidential.

c) Budgeted in-service capital additions

Interrogatory 3.2 SEC 25 asked for a table of actual v. Board approved/budgeted in-service additions for 2010 – 2014. Hydro One provided the information for 2010 and 2011, but explained that there were no Board-approved amounts in 2012 – 2014 as Hydro One was operating under an incentive regulation mechanism in those years. SEC then sought the internal budgeted amounts for those years. Hydro One in its submission argued that the request was excessive and invasive, as some information should be kept within the utility. Further, the information is not relevant as annual reporting and other mechanisms exist to monitor Hydro One's performance against the plan.

SEC submitted the budget information is relevant, as it will enable the Board to see whether Hydro One has executed its capital plan in those years, which is some indication of whether its forecast of capital expenditures in this application can be relied upon. SEC noted that similar information has been provided by other utilities.
The Board finds that a comparison between budgeted capital additions and actual capital additions is relevant to its assessment of Hydro One's capital plan going forward. The Board will require Hydro One to produce the budgeted capital additions for 2012, 2013 and 2104. Hydro One may choose to seek confidential treatment for these numbers if the company believes confidential treatment of the information is warranted.

d) Internal audit reports

Through interrogatories 4.2 SEC 35 and 6.1 SEC 84, SEC sought copies of internal audit reports for 2010 – 2014 for material OM&A and capital expenditures. Hydro One refused to provide them on the grounds that the reports are for internal use only, intended to provide information and assistance to Hydro One management regarding controls on high risk processes and internal operations across the company. The reports include details which Hydro One states are not relevant to the rate proceeding.

However, Hydro One, in its submission of August 8, offered to provide summaries of the relevant audit reports containing details of the subject matter and recommendations of the reports, as well as the action Hydro One has taken in response to the reports and the status of the implementation of the actions.

SEC argued that the internal audits will provide the Board and parties with information to test the prudence of capital and O&M spending for past and future years, and the cost-effectiveness of the execution of Hydro One's projects. SEC submitted that the provision of summaries containing the information that was required to be produced in the decision on a motion in EB-2013-0326 is insufficient, given the broad mandate of the Board in setting electricity rates and the request of Hydro One for approval of past capital expenditures included in its 2015 rate base.

The Board finds that the summaries proposed to be filed by Hydro One are adequate for the Board's purposes in this case. The Board is interested in understanding the recommendations made and actions taken in areas of Hydro One's business relevant to this application. The Board will not require Hydro One to produce the actual internal audit reports. Hydro One may choose to seek confidential treatment for the summaries if the company believes confidential treatment of the information is warranted.

THE BOARD ORDERS THAT:

1. The Board will hold in confidence, and not place on the public record, the following documents:
    - The attachments to interrogatories 1.1 CCC 3, 1.1 SEC 1 and 2.6 Staff 36 as described in Hydro One's letter dated July 17, 2014; and
    - The IHS reports attached to interrogatory 2.6 SEC 8.

2. Hydro One is required to file the following documents, numbered as supplemental answers to the relevant interrogatories:
    - The outsourcing RFP requested in interrogatory 3.1 SEC 22, once the RFP process is complete, having removed information that would compromise security;
    - A list of the comparator utilities in the customer satisfaction study provided in answer to interrogatory 2.6 Energy Probe 23b. The Board will provide confidential treatment for this list;

- The benchmarking review of Inergi fees provided in response to interrogatory 3.1 SEC 21, 4.2 Staff 63a and 4.2 Energy Probe 33a, with pages 7, 21 and 22 unredacted. The Board will provide confidential treatment for this refiled document;
- Internal budget information for years 2012, 2013 and 2014 as requested in interrogatory 3.2 SEC 25. Hydro One may seek confidential treatment for this information at the time of filing; and
- Summaries of the internal audit reports requested in Interrogatories 4.2 SEC 35 and 6.1 SEC 84, as described in Hydro One's submission of August 8, 2014. Hydro One may seek confidential treatment for this information at the time of filing.

DATED at Toronto, August 25, 2014

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

EB-2014-0116

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015 and for each following year effective January 1 through to December 31, 2019.

DECISION AND ORDER ON NOTICE OF MOTION
February 11, 2015

Toronto Hydro-Electric System Limited (Toronto Hydro) filed a Custom Incentive Rate (CIR) application (the Application) with the Ontario Energy Board (the OEB) on July 31, 2014 under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to the rates that Toronto Hydro charges for electricity distribution, to be effective May 1, 2015 and each year thereafter January 1 until December 31, 2019.

Relief Sought

On December 19, 2014, the School Energy Coalition (SEC) brought a motion seeking an order requiring Toronto Hydro to provide a full and adequate response to interrogatory 1B-SEC 8 and specifically to produce 8 benchmarking reports that Toronto Hydro participated in through the Canadian Electricity Association (CEA). Toronto Hydro has objected to the production of the benchmarking reports, not on the basis of relevance, but rather because Toronto Hydro is unable to receive the consent of the

CEA to provide the documents. The CEA claims that the reports are subject to copyright and that the CEA owns the copyright of the CEA reports.

The Process

On January 10, 2015, CEA filed a late intervention request with respect to the SEC Motion on the basis that the SEC Motion seeks to compel the disclosure and reproduction by Toronto Hydro of benchmarking data and reports and data models owned by CEA. In Procedural Order No. 5, the OEB, among other things, approved CEA's intervention request.

On January 14, 2015, CEA delivered a Notice of Constitutional Question (Notice) pursuant to the OEB's *Rules of Practice and Procedure* and section 109 of the *Courts of Justice Act.*

CEA states that the legal basis for the Notice is that as the copyright owner of the benchmarking reports and data models (the CEA Property), pursuant to section 3(1) of the Copyright Act, CEA has "[t]he sole right to produce or reproduce" the CEA Property "or any substantial part thereof in any material form whatever … and to authorize any such acts." CEA further states that Section 27(1) of the Copyright Act further 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."

CEA also argues that pursuant to section 3(1) of the Copyright Act, it must consent to the reproduction, and therefore the disclosure (on a confidential or public basis), of the CEA Property. Therefore, in accordance with the doctrine of federal paramountcy, an order of the OEB under section 21(1) of the OEB Act, and sections 5.4 and 12(1) of the Statutory Powers Procedure Act to compel disclosure of the CEA Property without CEA's consent would result in an incompatible operational effect with section 3(1) of the Copyright Act and would be constitutionally invalid.

The Documents

Prior to filing its motion, SEC requested that Toronto Hydro provide the names and subject matter of the benchmarking reports in question. It was not until the OEB required Toronto Hydro to provide this information by way of Procedural Order that this information was disclosed. The OEB is of the view that the CEA could have provided its

consent to Toronto Hydro to provide this information much earlier in the process. The following documents were listed by Toronto Hydro as being responsive to interrogatory 1B-SEC 8:

(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).

It became clear during oral argument that the four National/Public Attitudes reports were not benchmarking studies and therefore were not responsive to the SEC interrogatory. As the reports are not benchmarking documents, the SEC has withdrawn its claim for them. The OEB is disappointed that valuable time was spent by the parties arguing this motion when in fact four of the documents are not benchmarking documents. It is the OEB's view that the CEA could have provided information related to the nature of the four reports much earlier in the process.

With respect to the four remaining documents, the CEA submitted that the benchmarking data provided to CEA by its members as well as proprietary and confidential data models used by CEA to analyze such data was protected by copyright and was confidential .The Panel heard arguments (both oral and written) on the following issues:

1. Are the documents relevant?
2. If so, does copyright apply?
3. Does the fair dealing exception to copyright infringement apply?
4. Does the doctrine of federal paramountcy apply?

5. Are there public policy reasons for not making an order for production and disclosure?
6. If the documents are ordered to be produced do they warrant confidential treatment?

1. Are the documents relevant?

The first question that the OEB must determine is whether the documents are relevant. Toronto Hydro has not disputed the relevance of the documents. SEC argues that the OEB's test in determining relevance should be considered broadly. The purpose of interrogatories is to test the evidence. The OEB has consistently stated that it finds benchmarking material to be useful. Benchmarking is a core component of how the OEB regulates the energy sector. In its "*Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance Based Approach*" (RRFE) the OEB stated that, "(b)enchmarking will become increasingly important, as comparison among distributors is one means of analyzing whether a given distributor is as efficient as possible" and that "benchmarking will be necessary to support the OEB's renewed regulatory framework policies".[1]

The OEB has most recently stated its commitment to benchmarking in its *Report of the Board on Performance Measurement for Electricity Distributors: A Scorecard Approach* issued on March 5, 2014 which states that:

> The Board remains committed to continuous improvement within the electricity sector. Individual distributors achieve continuous improvement through their ongoing efforts to improve services and/or processes that are valued by their customers. Over time and collectively, distributors will advance continuous improvement in the sector through achievement of benchmark performance on valued services and/or processes[2].

The OEB must consider the relevance of the following reports;

[1] *Report of the Board: Renewed Regulatory Framework for Electricity Distributors: A Performance Based Approach*", October 18, 2012, pages 56, 59
http://www.ontarioenergyboard.ca/oeb/_Documents/Documents/Report_Renewed_Regulatory_Framework_RRFE_20121018.pdf
[2] *Report of the Board on Performance Measurement for Electricity Distributors: A Scorecard Approach, March 5, 2014, page i*
http://www.ontarioenergyboard.ca/oeb/_Documents/EB-2010-0379/Report_of_the_Board_Scorecard_20140305.pdf

1. 2014 Multi-Client Budget Benchmark Report (Information Technology) (the Gartner Report).

2. The draft 2013 Service Continuity Data on Distribution System Performance in Electrical Utilities (Draft Continuity Report)

3. Service Continuity reports for 2011, 2012 and 2013.

The OEB does consider the Gartner Report to be relevant. Toronto Hydro is seeking a significant amount of revenue in order to meet information technology (IT) costs. The OEB finds that benchmarking related to IT costs is relevant.

The OEB does not find the 2013 Draft Continuity Report to be relevant. The evidence shows that the draft report has been super-ceded by a final report. As a result, it is of limited value and need not be produced.

The OEB finds that the Service Continuity reports for 2011, 2012 and 2013 are relevant. These reports appear to contain benchmarking information related to an issue in this hearing. For the reasons stated above, the OEB considers the benchmarking information contained in these reports to be relevant.

2. Does Copyright apply?

AMPCO argued that as a matter of public policy, copyright does not prevent courts and tribunals from implementing and enforcing rules that require the production and exchange of relevant documents. Further AMPCO submitted that courts have recognized for decades the public interest in seeing disputes resolved fairly and on the facts. The OEB agrees that in this proceeding, before a statutory tribunal with a public interest mandate, the public interest to disclose weighs even more heavily than in a private dispute between litigants in court.

The OEB however does not find it necessary to determine if copyright applies as even if it did, the OEB has determined that the fair dealing exception to copyright infringement has been established.

Section 29 of the Copyright Act provides that a document produced in the context of fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

CEA argues that 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." CEA further submits that 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 the Crown rights to use copyrighted works without infringing them. CEA therefore concludes that reading the Copyright Act as a whole, it is apparent that Parliament's intention was to address government rights specifically and not wrap them in the fair dealing user right. The OEB disagrees with this argument.

The Copyright Act states at section 89 that "[n]o person is entitled to copyright otherwise than under and in accordance with this Act or any other Act of Parliament, but nothing in this section shall be construed as abrogating any right or jurisdiction in respect of a breach of trust or confidence." However, the Copyright Act is not a "complete code" of defences, exceptions and users' rights, as the CEA's own materials make very clear. The OEB finds the example provided by AMPCO in its submission a very persuasive argument in support of the principle that the Copyright Act is not a complete code. The six-part "fair dealing" test stated by the Supreme Court of Canada in *CCH Canadian Ltd. v.Law Society of Upper Canada* (CCH Canadian)[3] is *entirely* judge-made law. The Copyright Act itself simply mentions "fair dealing" for the purpose of research, private study, etc. as a defence and sets out *no* criteria to define what a "dealing" is, or what makes it "fair" or not.

3. Does the fair dealing exception to copyright infringement apply?

All parties and OEB staff put forward the same test to be considered for fair dealing. The test for fair dealing involves two steps, which are (i) to determine whether the dealing is for the allowable purpose of, for example "research," as in the CEA's view, it is inconceivable that the relief sought by SEC can be characterized as private study, education, parody or satire, and (ii) to assess whether or not the dealing is "fair," which involves the consideration of six factors: (1) the purpose of the dealing, (2) the character of the dealing, (3) the amount of dealing, (4) alternatives to the dealing, (5) the nature of the work and (6) the effect of the dealing on the work.

[3] *Law Society of Upper Canada v. CCH Canadian Ltd.* (2004), 30 C.P.R. (4th) 1 (S.C.C.) at pp. 17, 18.

The purpose of copyright has been expressed by the Supreme Court of Canada in CCH Canadian as being to balance the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator:[4] In this proceeding the "works of the arts and intellects" are the benchmarking reports and the "creator" is the third party author of the benchmarking report.

The two part test for fair dealing is as follows:

(a) the acts in question must be for a protected purpose (such as research);

And

(b) the acts in question must also be "fair" in all the circumstances.

The Supreme Court made it very clear that research is a broad concept and should be interpreted liberally. The OEB is required to make decisions in the public interest and to do so it must have access to all relevant information. The OEB has determined that the benchmarking reports are relevant and contain information that may assist the OEB in coming to its determinations. As such, the OEB finds that the proposed use of the reports constitutes research for the purposes of the parties making informed submissions and the OEB making an informed decision. The Supreme Court of Canada in CCH Canadian identified six factors that should be considered in assessing fairness.

a) the Purpose of the Dealing

The purpose of the dealing is to allow all parties to seek information and documents that are relevant to issues in the proceeding, and in the possession of the party to whom the interrogatory is addressed. Section 5.4(1) of the SPPA provides that "[if] the tribunal's rules made under section 25.1 deal with disclosure, the tribunal may, at any stage of the proceeding before all hearings are complete, make orders for, (a) the exchange of documents" or "(e) any other form of disclosure." As SEC submits, the Ontario Court of Appeal has confirmed that powers under section 5.4(1) do not mean disclosure in the narrow sense of word, but also include production of any relevant documents. The OEB has implemented rules regarding disclosure in its *Rules of Practice and Procedure,* including, most germane to this motion, provisions relating to interrogatories (Rules 26-27).

[4] *Law Society of Upper Canada v. CCH Canadian Ltd.* (, *supra*.

b) the Character of the Dealing

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. The OEB has in its discretion the ability to make an order for discrete distribution of the benchmarking reports and that copies be made for the parties and the OEB's use in the proceeding.

c) the Amount of the Dealing

The CEA concedes that it does not take issue with the production of the documents, but rather its objection is to the making of copies of the documents for use by the OEB and parties to the proceeding. The CEA advises that it does not object to the production of one copy of the documents to be placed at the OEB offices, but the CEA will not allow the making of copies to be used by the panel members or the intervenors participating in the case.

Fair dealing does mean that only the minimum number of copies required by parties and the OEB are to be made.

d) Alternatives

The OEB must balance the interests of copyright holders (the CEA) with the efficient running of a tribunal. To have one copy of a document available at the OEB office, or panel members passing a document back and forth during a hearing, is impractical and goes to the ability of parties and panel members to effectively participate in the proceeding. At a time when ratepayers are asking the OEB to be efficient in its processes, the method proposed by the CEA represents a step backward.

e) the Nature of the Work

The CEA submits that the benchmarking reports are commercial documents that may contain commercially sensitive information. The OEB recognizes this argument but takes the view that the commercially sensitive nature of the work is not in itself a reason to not produce the documents.

f) Effect of the Dealing on the Work

CEA asserts that any production order will have a negative effect on its ability to receive information from third parties to produce future versions of these types of surveys. OEB staff submits that this argument needs to be weighed against the need to allow production of documents in support of the administration of justice and/or of the "public interest."

Treatment of the Documents in keeping with the fair dealing principle

The OEB finds that Toronto Hydro can provide copies of the reports without there being an infringement of the Copyright Act, based on the fair dealing exception. Copies will not be placed on the OEB website nor will they be further reproduced in any way by the parties as this would affect the financial interests of the CEA. Documents will be returned and destroyed as is in keeping with the OEB's treatment of confidential documents.

The OEB finds that the fair dealing exception to copyright infringement addresses the concerns of the CEA and provides a reasonable approach.

4. Does the doctrine of Federal Paramountcy apply?

The CEA filed a Notice of Constitutional Question wherein it alleged that the Copyright Act, as federal legislation is paramount to the provincial OEB Act and SPPA. As argued by the parties and accepted by the OEB, the party asserting paramountcy has the burden of meeting the high standard required to invoke the doctrine of paramountcy.

There are two ways in which a federal enactment can be paramount to a provincial enactment:

(a) where it is impossible to comply simultaneously with both enactments, in the sense that compliance with one would result in a breach of the other; or

(b) the provincial enactment displaces or frustrates Parliament's legislative purpose underlying the federal enactment.[5]

[5] *Canada (Competition Act, Director of Investigation and Research) v. Warner Music Canada Ltd*., [1997] CCTD No. 53

All parties agreed to the test noted above. It is the finding of the OEB that based upon the treatment of the documents, pursuant to the fair dealing exception, it is neither impossible to comply with both enactments simultaneously nor is there any frustration of the legislative purpose of the Copyright Act.

5. Are there public policy reasons for not making an order for production and disclosure?

CEA argues that the SEC Motion should be denied on public policy grounds because granting of the requested relief would have a chilling effect on the improvements for which Canadian power utilities strive. Disclosure would preclude the national benchmarking and data analysis that CEA member utilities rely upon to improve their economic efficiency, performance and customer service standards.

The OEB does not accept this argument. Benchmarking is becoming an increasingly important tool for regulators to assess the performance of those entities which they regulate. As such, utilities will be required to participate in benchmarking activities. Furthermore, the treatment of the reports, as ordered by the OEB ensures that there will not be public dissemination of the information supplied by utilities nor the corresponding conclusions. The OEB has consistently maintained that the utilities it regulates may be required to provide benchmarking reports for consideration as the OEB makes its determinations.

Order of the OEB

The OEB will order production of the four reports but will do so on a confidential basis. The OEB recognizes that two of the reports are available for sale, and while the fact that those reports are publicly available for a price makes them “not confidential”, for practical purposes they will be treated as such. The OEB’s Practice Direction deals with the management and administrative issues associated with confidential documents. While the two documents may be available for purchase, the OEB finds that they should not be publicly disseminated through this proceeding and for the purposes of this application will be treated as confidential filings.

6. Is Confidential Treatment Warranted?

The OEB’s general policy is that all records should be open for inspection by any person unless disclosure of the record is prohibited by law. The OEB’s view is that its

proceedings should be open, transparent and accessible. The OEB therefore generally places the information it receives on the public record. The OEB also relies on full and complete disclosure to ensure that its decisions are well-informed. The OEB recognizes that in order to do so some information may need to be filed in confidence. CEA takes the position that disclosing the benchmarking reports would prejudice its competitive position and would produce a significant economic loss to the CEA. If the reports were publicly available, the CEA would lose the ability to sell the reports for financial gain. As the OEB's Practice Direction indicates, competitive position and significant loss are two of the factors the OEB may consider in addressing the confidentiality of filings.

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In striving to find a balance between the general public interest in transparency and openness, and the need to protect the CEA's competitive position, the OEB is satisfied that in these circumstances, confidential treatment of the reports is warranted.

Toronto Hydro put forward a proposal whereby it would provide the reports with utility information redacted, (except Toronto Hydro). Put forward as a potential solution, this would result in parties being able to see Toronto Hydro's information, while protecting the identities of the comparison utilities. The OEB is rejecting this proposal. In order to consider the benchmarking material in any meaningful way, it is necessary to understand the entities against which Toronto Hydro is being compared.

Stay

Parties to the motion indicated that in the event the CEA sought a stay of the OEB's order, parties requested the ability to make submissions. A stay of this order is not automatic. However the OEB has the discretion to order a stay. The OEB will not do so. The OEB has determined that based on the order that it has made, there is little if any harm to the CEA by ordering the confidential production of the benchmarking reports. This is especially important since a stay pending appeal could well require the OEB to delay Toronto Hydro's rate application.

Costs for the CEA

In requesting intervenor status to participate in the hearing of this motion, the CEA requested and was denied cost eligibility. The CEA asked the OEB to re-consider its previous decision on the basis that the member distributors participating in the hearing of the motion were not participating in their role as distributors and therefore should not

be precluded from receiving costs on that basis. The CEA also argued that many of its members were situated outside of Ontario and the OEB's jurisdiction and therefore should also be allowed to recover costs. The OEB has considered these arguments, but will not reverse its original decision on cost eligibility. The arguments made do not represent new information that was not previously considered by the OEB in reaching its original decision. The OEB finds that the CEA in bringing its motion does so in the context of protecting its purely commercial business interests and as such should not seek to recover these costs from Toronto Hydro ratepayers.

The BOARD ORDERS THAT:

1. Toronto Hydro is directed to file with the OEB copies of the four benchmarking reports listed below, in accordance with the Practice Direction on Confidential Filings, no later than 4:45pm two business days subsequent to the issuance date of this Decision and Order:

    i. The 2014 Multi-Client Budget Benchmark Report (Information Technology) (Gartner Inc).

    ii. The 2011, 2012 and 2013 Service Continuity Data Reports on Distribution System Performance in Electrical Utilities (CEA)

All filings to the OEB must quote the file number, EB-2014-0116, and be made electronically through the OEB's web portal at https://www.pes.ontarioenergyboard.ca/eservice/, in searchable / unrestricted PDF format. Two paper copies must also be filed at the OEB's address . Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at http://www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary, and be received no later than 4:45 p.m. on the required date.

With respect to distribution lists for all electronic correspondence and materials related to this proceeding, parties must include the Case Manager, Martin Davies at Martin.Davies@ontarioenergyboard.ca and Board Counsel, Maureen Helt at Maureen.Helt@ontarioenergyboard.ca.

DATED at Toronto, February 11, 2015

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary

Ontario Energy Board

Commission de l'énergie de l'Ontario

EB-2016-0160

Hydro One Networks Inc. Transmission

Application for electricity transmission revenue requirement and related changes to the Uniform Transmission Rates beginning January 1, 2017 and January 1, 2018

DECISION on MOTIONS for FULL AND ADEQUATE RESPONSES TO INTERROGATORIES and TECHNICAL CONFERENCE QUESTIONS
November 1, 2016

Hydro One Networks Inc. (Hydro One) filed a cost of service application with the Ontario Energy Board (OEB) on May 31, 2016 under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, c. 15, (Schedule B), seeking approval for changes to its transmission revenue requirement and to the Ontario Uniform Transmission Rates, to be effective January 1, 2017 and January 1, 2108.

On July 27, 2016, the OEB issued Procedural Order No. 1 approving intervenor status for fifteen parties and also approving cost award eligibility for ten of those intervenors. Procedural Order No.1 also established the dates for filing of interrogatories and for Hydro One's reply to those interrogatories.

On August 31, 2016, Hydro One provided responses to the interrogatories and sought confidential treatment for a number of documents attached to eight of its interrogatory responses. The Decision and Procedural Order No. 4 issued on October 27, 2016, addressed the confidentiality issue and approved the filing of evidence by Environmental Defence (ED) and Anwaatin Inc. A technical conference was held on September 22 and 23, 2016.

Following the technical conference, two motions were filed:

1. School Energy Coalition (SEC) motion, dated September 28, 2016, for full and adequate responses to interrogatories and technical conference questions.

2. Environmental Defence (ED) motion, dated September 29, 2016, for full and adequate interrogatory responses.

This is the Decision on the above two noted motions.

Motions for Full and Adequate Responses to Interrogatories and Technical Conference Questions

SEC requested an order requiring Hydro One to provide full and adequate responses to the following interrogatory and technical conference questions:

1) SEC Interrogatory #6 (Exhibit I/Tab 6/Schedule 6) specifically, the production of the:

   i) North American Transmission Forum (NATF) Hydro One Peer Review Report, and

   ii) North American Transmission Forum (NATF) Transmission Reliability Report;

2) Hydro One's 2016 forecast ROE (a follow-up question to BOMA Interrogatory #30 (Exhibit I/Tab2/Schedule 30);

3) Hydro One Business Group Business Plans (follow up to SEC Interrogatory #2 (Exhibit I/Tab 6/Schedule 2);

4) OEB staff Interrogatory #28 (Exhibit I/Tab1/Schedule 28) and SEC Interrogatory #29 (Exhibit I/Tab 6/Schedule 29), specifically individual asset replace vs. refurbish Asset Economic Assessment graphs for assets over $20M; and

5) Production of two internal audit reports: (follow-up to AMPCO Interrogatory #1 (Exhibit I/Tab 3/Schedule 1), specifically the:

   i) Audit of Investment Planning #2014-29 (January 30, 2015); and

   ii) Transmission Lines Preventive Maintenance Optimization #2015-33 (April 7, 2016).

ED, in its motion, requested an order that Hydro One and/or the Independent Electricity System Operator (IESO) provide full and adequate responses to ED interrogatories 1-5 (Exhibit I/Tab 5/Schedules 1 – 5). The information that ED seeks relates to the topic of Hydro One's transmission losses and consists of:

- the actual import and export capacity of Hydro One's transmission assets and the constraints on its system that define that capacity;
- data on historical transmission losses, including peak period losses for the past 10 years;
- average transmission losses for other transmission companies in the United States and Canada;
- data on various sources of transmission losses including regional variations; and
- annual estimated cost of transmission losses for Hydro One for each of the past 10 years.

In Procedural Order No. 3, the OEB provided for submissions on these motions by OEB staff, followed by submissions from Hydro One, and then reply submissions from SEC and ED.

OEB staff filed submissions on October 18, 2016. Also, on October 18, 2016, submissions in support of the SEC Motion were made by the Vulnerable Energy Consumers Coalition, Consumers Council of Canada, Canadian Manufacturers and Exporters and the Association of Major Power Consumers in Ontario. The OEB issued a letter on October 19, 2016, indicating that Hydro One should take these letters into account in its reply submissions. Hydro One filed its submissions on October 21, 2016 and the reply submissions from SEC and ED were received by the OEB on October 25, 2016.

SEC Motion

NATF Peer Review and Transmission Reliability Reports

Relying on the Affidavit of its Vice President - Planning, Hydro One objects to producing these reports on the grounds that Hydro One states that it will be forced to withdraw as a member of the NATF organization if the OEB requires it to produce these reports on the public record.

2016 Forecast ROE

SEC notes that for the years 2012 to 2015 inclusive the actual ROE for Hydro One Transmission exceeded the OEB formula percentage. SEC contends that, in these circumstances, the forecast of Hydro One's 2016 ROE is relevant to an assessment of the reliability of Hydro One's 2017 and 2018 transmission revenue and expenditure forecasts. Hydro One contends that the requested information is not relevant to matters at issue in this proceeding and that it should not have to produce the information even if it is protected under the auspices of an OEB confidentiality order.

Business Plans

The technical conference transcript indicates that Hydro One has not yet developed a company-wide business or strategic plan or an organization chart of its operations. The only business plans that currently exist are the individual business plans at a group level. SEC requests but Hydro One refuses to produce these documents on the grounds that the level of granularity implicit in this degree of scrutiny of its business plans is not appropriate in this proceeding. SEC contends that its production request is reasonable having regard to the fact that these are the only internal business plans that are available.

Asset Investment Economic Analysis (Replace or Refurbish)

SEC seeks the production of Hydro One's replace versus refurbish economic analyses for the subset of Hydro One's capital projects that have an estimated cost exceeding $20M. Hydro One objects to producing this information on the grounds that it will lead to a level of scrutiny that is unreasonably granular.

Internal Audit Reports

SEC, supported by AMPCO, seeks the production of 2 specific audit reports from the total of 40 internal audits conducted by Hydro One in the past 2 years. Hydro One objects on the grounds that, in past decisions, the OEB has not required that such audit reports be filed in response to blanket requests for their production. Instead the OEB has directed Hydro One to file summaries of these audit reports. In this proceeding, AMPCO submits that these summaries do not enable the reader to understand the issues raised during the audit or the recommendations made at the conclusion of the process.

ED Motion

Hydro One opposes the ED requests for further information on the grounds that it is not in possession or control of the information requested. It relies on a letter from the IESO dated October 20, 2016. This letter refers to other processes where the matter of transmission losses is being considered including the development of the Ministry of Energy's next Long Term Energy Plan (LTEP).

In its Reply submissions dated October 25, 2016 ED noted that Hydro One did not respond to the suggestions contained in paragraphs 17 and 26 of the ED Motion materials. These suggestions describe ways one might estimate Hydro One's transmission losses and their cost. These suggested estimating mechanisms are repeated in footnote 9 of ED's reply.

Now that the OEB has allowed ED to file evidence in this proceeding[1] Hydro One will be presenting a witness to address, to the extent possible, the questions that ED has about energy losses information and Hydro One's rationale for not taking such information into account in its transmission planning process.

Findings

School Energy Coalition Motion

NATF Peer Review and Transmission Reliability Reports

The OEB has articulated the importance it places on both internal and external benchmarking on numerous occasions, most recently in the Handbook for Utility Rate Applications. The OEB is sensitive to Hydro One's concerns about maintaining its confidentiality commitments to NATF and will not compel production of the NATF reports at this time. The OEB will first attempt to obtain information related to the benchmarking nature of the reports in a fashion that can be used openly in the hearing.

The OEB requires Hydro One to provide a summary of the pertinent information in these reports complete with the number of entities that participated in each, its own performance tracking over time against itself and how it ranks in relation to its peers over time. The OEB will determine the need for further exposure of the reports once it receives this information.

[1] Decision and Procedural Order No. 4, Oct. 27, 2016

The OEB notes that Hydro One has been a member of NATF since 2006 and that the NATF Peer Review and Transmission Reliability Reports are produced annually. The information that the OEB is directing Hydro One to produce is to include the data from its own operations relating to the benchmarks that NATF used to conduct its peer review and transmission reliability assessments in each of the years 2006 to 2015. This information will help the OEB better understand the transmission system benchmarks that are considered by the industry to be appropriate and Hydro One's year–over-year performance in relation to those benchmarks. This information is to be accompanied by the total number of members in NATF in each year against which Hydro One was benchmarked and, for each benchmark used in each report, Hydro One's ranking amongst the other transmitters.

2016 Forecast ROE

The OEB regards information of this nature to be of some relevance to matters at issue in this proceeding. That said, the OEB prefers to obtain data on the public record that can be used freely in public submissions and in public decisions. The OEB will not require a projection of the 2016 year end ROE at this time. Rather the OEB requires Hydro One to provide the actual 3rd quarter ROE (once available) along with the type of analysis that accompanied BOMA IR #30 explaining the reasons for any variance in actual ROE to date compared to the forecast ROE to date embedded in Hydro One's 2016 OEB approved revenue requirement.

Business Plans

The OEB has provided its expectations with respect to the filing of business plans in the recent Handbook for Utility Rate Applications. The OEB is assisted by these types of documents because they provide insight into the overarching company objectives that are underpinned by its many activities.

The OEB requires Hydro One to provide a business level plan that describes the overall strategy and business planning direction of the company. What the OEB requires is the type of document that would typically be presented to the board of directors for approval. If such a document does not exist, then the OEB requires Hydro One to explain the reasons for its unavailability in view of the fact that similar documents have been filed with the OEB in previous proceedings (e.g. EB-2012-0031 and EB-2013-0416). As a minimum, the OEB requires Hydro One to file any existing documents that articulate the objectives and high level plans of the most significant business units within Hydro One which would typically be presented to senior management for approval.

Asset Investment Economic Analysis, (Replace or Refurbish)

The OEB considers this type of information to be informative of the company's approach to its core asset management function. The OEB does not need to examine all projects captured by SEC's request to obtain an understanding of Hydro One's approach. The OEB will however compel the production of a subset of the information sought in SEC's motion. The OEB requires Hydro One to file the "replace versus refurbish" economic analysis and any other documentation that was produced or used in support of the approvals related to 3 examples for each major asset type. For each major asset type, the 3 examples will consist of recent projects having the largest investment levels. .

Internal Audit Reports

The OEB finds the two reports requested by SEC to be relevant and not onerous to provide and requires them to be filed. The OEB will afford these reports an interim confidential status subject to Hydro One providing compelling reasons to maintain that status. The previous audit report production decisions of the OEB, on which Hydro One relies, are distinguishable in that they were based on blanket requests. Moreover since those decisions were rendered, the summaries that they authorized, as substitutes for the audit reports, have not been found to be useful.

ED Motion

The OEB does not require any further information related to the intertie capacity. The significance of issues that ED has identified is reflected in the IESO letter of October 20, 2016 where it refers to the other public forums and processes where these matters are being pursued. The OEB does not require any analysis of potential electricity market procurement opportunities in other jurisdictions in its consideration of Hydro One's current application.

As noted in the OEB's determination on ED's evidence proposal, the OEB wishes to gain a better understanding of transmission losses. The OEB expects to be informed by the additional evidence that ED will be providing and from the witness that Hydro One has committed to provide on this topic. In anticipation of gaining a better understanding of the manner in which transmission losses are generally managed in the sector, the OEB considers it premature to require the production of the information that ED seeks in its entirety. That said, the OEB does require Hydro One to provide the estimates of transmission losses and their cost using the approaches described in ED's footnote 9 on page 3 of ED's October 25, 2016 reply submission or to explain why these estimates either cannot be provided or are otherwise inappropriate.

IT IS THEREFORE ORDERED THAT:

1. Hydro One shall provide the responses and information as determined in this Decision, no later than November 11, 2016.

All filings to the OEB must quote the file number, EB-2016-0160, be made in searchable /unrestricted PDF format electronically through the OEB's web portal at https://www.pes.ontarioenergyboard.ca/eservice/. Two paper copies must also be filed at the OEB's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at http://www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

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DATED at Toronto, November 1, 2016

ONTARIO ENERGY BOARD

Original signed by

Kirstin Walli
Board Secretary