



BY EMAIL and RESS

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March 25, 2026
Our File: EB20240115

Attn: Ritchie Murray, Acting Registrar

Dear Mr. Murray:

Re: EB-2024-0115 – Hydro Ottawa 2026-2030 – SEC Correspondence

We are counsel to the School Energy Coalition (“SEC”). We write to address two matters arising from Hydro Ottawa's reply argument filed March 23, 2026, the accompanying letter filed by McCarthy Tetrault LLP on behalf of Gartner Inc. (the “Gartner Submission”), and Hydro Ottawa's treatment of SEC's compensation calculations included in the Appendix to its Final Argument.

Gartner Submissions

SEC requests that the OEB strike the Gartner Submission from the record. Gartner is not a party to this proceeding. It has not sought or been granted intervenor status, and has no standing to file submissions. The OEB's *Rules of Practice and Procedure* do not provide for unsolicited submissions from non-parties at the reply argument stage.

While SEC disagrees with the content of the Gartner Submission, it will limit itself to the following brief comments.

First, ironically, Gartner argues that SEC's challenge to the evidentiary weight of the Gartner Report is “procedurally improper” because it did not bring a motion to compel disclosure during the discovery phase. Final argument is precisely the stage at which parties make submissions about the weight the OEB should give to evidence and concerns regarding methodology. That is what final argument is for. A party does not need to bring a motion at an earlier stage in order to argue that evidence should be given little or no weight because information sought was refused to be provided by way of interrogatory. Even in civil litigation, where procedural requirements are considerably more stringent, the Ontario courts have explicitly held that a failure to bring a motion to compel does not preclude adverse inferences from a refusal to answer.¹ The principle applies with at least equal, if not greater, force before the OEB.

¹ See [Stewart v. Lattanzio, 2022 ONSC 1770](#), para. 31

Second, the Gartner Submission also mischaracterizes SEC's argument. SEC never suggested that Gartner be required to breach its confidentiality agreements or disclosure be compelled. SEC's argument is that when neither intervenors, the regulator, nor even the utility, are provided the identities of the comparators companies, the OEB cannot meaningfully assess the benchmarking results.² The legal obligation to provide this foundational information is on the utility filing the report, which it confirmed in this case it does not have³, and so the remedy sought is that it be given no weight. Most of the Gartner Submission is directed at an argument SEC did not make.

Finally, the manner in which Gartner has now involved itself in the proceeding is concerning. Gartner's decision to retain external counsel to file adversarial submissions attacking the arguments of an intervenor is impossible to reconcile with an expert's⁴ duties set out in Rule 13A.02⁵, and the Acknowledgment of Expert's Duty⁶, which is to assist the OEB impartially and in a non-partisan manner. An expert who becomes an advocate has compromised the appearance of impartiality on which expert evidence depends. Gartner's real concern is transparent. It is seeking to protect its commercial interests. If the OEB agrees with SEC and gives no weight to benchmarking studies that do not even identify the comparator companies, it may impact Gartner's ability to sell these types of reports to other Ontario utilities for use in regulatory proceedings. This is not an interest relevant to the OEB's decision or mandate.

Compensation Calculations

In its Reply Argument, Hydro Ottawa devotes most of Table 13 to cataloguing errors in what it calls "Model 2", the Excel Appendix that accompanied SEC's original Final Argument.⁷ SEC identified that this file was incorrect and filed a correct version (what Hydro Ottawa calls "Model 3") with a revised Final Argument the next day. Hydro Ottawa knows this, as its reply also addresses Model 3. Attacking a superseded document to create confusion and a misleading impression is not proper. SEC did not cite Hydro Ottawa's original interrogatory responses, that were later corrected⁸, in its criticisms of that aspect of relevant evidence, as that would equally be inappropriate.

Yours very truly,

Shepherd Rubenstein P.C.

Mark Rubenstein

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

² [SEC Final Argument \(Revised\)](#), para 2.9.5-2.9.9

³ Technical Conference Transcript, Day 2, p.151; Oral Hearing Transcript, Vol. 1, p.151

⁴ Ex.1-3-3, Attachment E, p.8: "Hydro Ottawa is seeking an independent and objective expert benchmark of its overall IT spend and staffing position relative to comparable peer organizations."

⁵ [Rules of Practice and Procedure](#), Rule 13A.02

⁶ [OEB Form A: Acknowledgement of Expert's Duty](#). Although to our knowledge Gartner never signed the OEB's Form A.

⁷ Hydro Ottawa Reply Argument, p.65-66

⁸ See for example updates to 1-SEC-24 through 1-SEC-27 as a result of "discovered calculation errors" ([See Hydro Ottawa Letter, September 22, 2025](#))