

SENT BY RESS & COURIER

September 27, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
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Dear Ms. Walli:

**Re: EB-2013-0301 – OEB Review of Framework Governing the Participation of Intervenor
in Board Proceedings – Independent Electricity System Operator (“IESO”)
Submission**

The IESO submits these comments on the framework governing the participation of intervenors in Board proceedings in response to the Ontario Energy Board's (the “Board”) August 22, 2013 letter. Having participated in many Board proceedings and consultations in various roles – applicant, intervenor, subject matter expert – the IESO is familiar with the Board’s current approach to intervenor status, cost eligibility, and cost awards. The IESO is pleased to offer comments in support of the Board’s goal of enhancing the efficiency and effectiveness of the application and hearing process.

Intervenor Status

It is the IESO’s view that the Board can take measures when granting intervenor status that may aid in making the overall proceeding more effective. In its August 22nd letter, the Board asked the following questions regarding intervenor status:

1. What factors should the Board consider in determining whether a person seeking intervenor status has a “substantial interest” in a particular proceeding before the Board? For instance, should the Board require a person seeking intervenor status to demonstrate consultation or engagement with a constituency directly affected by the application?

2. What conditions might the Board appropriately impose when granting intervenor status to a party? For instance, should the Board also require an intervenor to demonstrate how the intervening group or association governs the participation by its legal counsel and other representatives in the application?

The IESO supports the Board's suggestion requiring a person seeking intervenor status to demonstrate consultation or engagement with a constituency directly affected by the application. As described in question 1 above, in determining whether a party should receive intervenor status, the party must satisfy the Board that they have a substantial interest in the proceeding. By requiring the intervenor to demonstrate consultation or engagement with its constituency, the Board is better informed about how those interests relate to a specific application. To accomplish this, the IESO proposes that the Board require intervenors to file evidence demonstrating such consultation or engagement with their letter of intervention. This evidence could be in the form of minutes from annual meetings, corporate bylaws or other supporting documents.

In addition, parties requesting intervenor status should be more descriptive when expressing their interest in a proceeding. In support of that, the Board may wish to include more stringent requirements under section 23 of the Board's Rules of Practice and Procedure (the "Rules") outlining the process for requesting intervenor status. Section 23.02 states that the "person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness". Section 23.03(a) lists the information that a letter of intervention must contain including "a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention."

To capture the details necessary for the Board to assess whether a party has substantial interest in a proceeding, the IESO proposes the following language for section 23.03(a) of the Rules:

- (a) a description of the intervenor **including its objects, vision statement and mission, if available**, its membership, if any, the interest of the intervenor in the proceeding **including a description of the specific issues of interest** and the grounds for the intervention **including how the intervenor is affected by the abovementioned issues**.

A clear declaration or description of a party's scope in a proceeding would also allow for intervenors with similar interests to optimize their participation in Board proceedings through collaboration.

The IESO supports the requirement for intervenors to demonstrate how the intervening group or association governs the participation of its legal counsel and other representatives. Parties representing an intervenor in a Board proceeding are often external to the represented party,

providing expertise to the intervenor on the proceeding subject. To ensure an effective process, it is important to ensure that any views expressed during the proceeding are those of the intervenor. The IESO proposes that parties describe this governance or provide evidence of this governance in their letter of intervention.

The IESO also suggests the Board set up an “Intervenor” page on its website to facilitate communication and coordination amongst applicants and other intervenors. This page could contain an online application form for intervenor status. Once a party is granted intervenor status, the Board could post the intervenor’s information on the Intervenor page in a similar format to that used for licence holders:

▲ Intervenor Name	Represents	Regulatory Contact	Phone Number
XY Intervenor	Consumers	John Q. Smith Box 1232 Anytown ON A1B 3C4	+1 (905) 111-3222

Cost Eligibility

In its August 22nd letter, the Board posed the following questions:

1. What factors should the Board consider in determining whether a party primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board? For instance, should the Board require the party to demonstrate consultation or engagement with a class of consumers directly affected by the application?
2. What factors should the Board consider in determining whether a party primarily represents a public interest relevant to the Board’s mandate?
3. What conditions might the Board appropriately impose when determining the eligibility of a party for costs? For instance, what efforts should the Board reasonably expect a party to take to combine its intervention with that of one or more similarly situated parties? Should the Board reasonably expect parties representing different consumer interests to combine their interventions on issues relating to revenue requirement (as opposed to cost allocation)?
4. Should the Board consider different approaches to administering cost awards in adjudicative proceedings? For instance, should the Board consider adopting an approach that provides for pre-approved budgets, pre-established amounts for each hearing activity (similar to the approach for policy consultations), and pre-established disbursements?

The ideas expressed above with respect to the *Intervenor Status* questions also apply to questions 1 and 2 above. The Board's criteria for cost eligibility are described in section 3.03 of the Board's Practice Direction on Cost Awards:

- 3.03 A party in a Board process is eligible to apply for a cost award where the party:
- a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board;
 - b) primarily represents a public interest relevant to the Board's mandate; or
 - c) is a person with an interest in land that is affected by the process.

By requiring interested parties to file documents such as a corporate bylaws or meeting minutes, the Board introduces another level of verification that the direct interests of consumers (e.g. ratepayers) are represented.

Adding more stringent requirements in the Rules for obtaining intervenor status will assist other intervenors and the Board in identifying parties with similar interests. It is reasonable for the Board to expect a party to combine its intervention with that of one or more similarly situated parties. The IESO would further suggest that with more detailed letters of intervention, the Board could direct parties with related interests to coordinate their efforts. This could result in a more effective and efficient discovery period as the likelihood of duplicative interrogatories and the time required to cross-examine witnesses would be reduced.

The IESO supports the Board's proposal to identify at the outset of a proceeding, pre-established amounts for each hearing activity, as provided in this consultation. This establishes the Board's expectation for intervenors' involvement. This would not preclude an intervenor from filing a cost claim in excess of the Board's pre-established amounts; however, the onus would be on the applicable intervenor to justify its claim. While this may not be achievable for all proceedings, the Board would have the discretion to adjust these amounts throughout a proceeding, as necessary.

Recommended Modifications

The Board also asked in its August 22 Letter:

1. Are there modifications that the Board should consider making to the Rules and the Practice Direction?

At this time, the IESO does not propose further modifications to the Rules or Practice Direction beyond Rule 23.02 noted above.

Conclusion

The IESO would like to thank the Board for the opportunity to participate in this consultation and hopes that these proposals will assist in improving the efficiency and effectiveness of the Board's intervenor process.

All of which is respectfully submitted.

Original Signed by

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