

**EB-2013-0301:
Review of Framework
Governing the Participation
of Intervenors in Board
Proceedings-Consultation
and Stakeholder
Conference**

***Ontario Power Authority
Comments***

September 27, 2013



1 **Background**

2 The Ontario Power Authority (“OPA”) is in receipt of the Ontario Energy Board’s (“Board”) 3 August 22, 2013 letter requesting interested parties to provide comments on the review of its 4 framework governing the participation of intervenors in Board Proceedings. The OPA 5 understands that the review will be comprised of two phases, and is pleased to have the 6 opportunity at this time to provide its written comments as part of phase one.

7 The OPA acts as both the applicant and the intervenor in various proceedings, as well as a 8 stakeholder or participant in many Board consultations. It also reviews the submissions of 9 Board staff and intervenors in cases that may be of relevance to the OPA, including Board 10 Decisions and findings. The OPA is therefore familiar with the Board’s framework, the 11 intervention process, and the associated cost award process. The OPA provides its comments 12 in this context, and per the Board’s stated objectives, with the goal of further enhancing the 13 efficiency and effectiveness of the application and hearing process.

14 The OPA supports efficient intervenor participation and appreciates the benefits that such 15 participation can bring to the process, such as scoping the issues and submitting probative and 16 relevant interrogatories that clarify the evidence. Efficient intervention, in the OPA’s opinion, 17 should not only benefit the intervening party, but also provide value to the Board and assist the 18 effectiveness of the process.

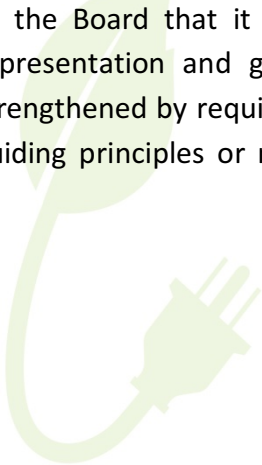
19 **OPA Comments**

20 The OPA’s comments below look to address a number of the questions raised by the Board in 21 their August 22, 2013 letter:

22 **Intervenor Status**

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

27 The Board’s Rules of Practice and Procedure currently require that an intervenor demonstrate 28 to the Board that it has a substantial interest in the proceeding by way of describing its 29 representation and grounds for intervention. The OPA believes that this factor can be 30 strengthened by requiring an interested intervenor to provide a description of the intervenors’ 31 guiding principles or mission statement (if applicable), to demonstrate how its constituents,



32 programs or operations etc. may be impacted by the outcome of the Board's decision, and to
33 demonstrate (if applicable) that the intervenor has an established record of concern for and
34 commitment to the interest it plans to represent in the proceeding.

35 An example of such a demonstration would be the OPA's request for intervention in
36 PowerStream's application for a Board-Approved Conservation and Demand Management
37 ("CDM") Program (EB-2013-0070) earlier this year. In its intervention request, the OPA outlined
38 its role in designing and delivering CDM programs since its inception. The intervenor request
39 letter also outlined that the OPA had provided a letter of support to PowerStream summarizing
40 the distinctions between PowerStream's proposed CDM program and the OPA's current CDM
41 programs as part of the application, thus demonstrating the linkage between PowerStream's
42 application and the OPA's business activities. The OPA believes that providing further
43 information demonstrating the basis for participation would help in determining whether an
44 intervenor has a substantial interest in a proceeding, and in allowing the applicant to effectively
45 engage with the intervenor throughout the current and future proceedings.

46 Additionally, the OPA believes that engaging with constituents prior to a proceeding can be
47 valuable in demonstrating and focusing the scope of an intervenor's participation and interest.
48 However, the OPA is cognizant that there are a number of proceedings throughout a year that
49 could be of interest to an intervenor, and requiring regular engagement with an intervenor's
50 constituents prior to each could be logistically difficult, as well as inefficient. It could be
51 reasonable to require an intervenor to demonstrate regular engagement with its constituents,
52 on an annual basis for instance, to discuss the breadth of issues of concern to the interest
53 group. The OPA believes this step would be a means to demonstrate the relevance of
54 participation.

55 Furthermore, the Board could recommend that where possible the intervening party show that
56 it participated in an applicant's pre-application meetings and stakeholder conferences, to also
57 demonstrate to the Board its willingness to facilitate an efficient regulatory process by
58 intervening after it has become apprised and familiar with the topics to be reviewed. This early
59 engagement affords the potential intervenor the opportunity to become familiar with, and
60 have an influence on, the issues and the scope of topics that will become part of the
61 application. It would further support informed decision making by the party as to whether
62 there is a need to participate as an intervenor or not. This early engagement stage is also an
63 opportunity for parties with similar issues to discuss the potential for collaboration as
64 intervenors.

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

69 The OPA strongly supports the Board in its pursuit of efficient and timely regulatory processes
70 and submits that the Board should continue to enforce timelines established through
71 procedural orders, and continue to use these as conditions of granting intervenor status to a
72 party.

73 **Cost Eligibility**

74 **1. What factors should the Board consider in determining whether a party primarily**
75 **represents the direct interests of consumers (e.g. ratepayers) in relation to services that are**
76 **regulated by the Board? For instance, should the Board require the party to demonstrate**
77 **consultation or engagement with a class of consumers directly affected by the application?**

78 The OPA submits that similar to its comments to question 1 on the topic of Intervenor Status,
79 the Board should consider a party's mission statement or guiding principles and engagement
80 undertaken in determining whether a party primarily represents the direct interest of
81 consumers. Additionally, the OPA submits that it could be beneficial for the interested
82 intervenors to demonstrate the make-up of their constituents and/or sources of funding. For
83 example, the Board could require associations that claim to represent consumers to file with
84 the Board an annual report outlining their membership. The Board could take this information
85 into account when determining cost eligibility for specific proceedings.

86 **2. What factors should the Board consider in determining whether a party primarily**
87 **represents a public interest relevant to the Board's mandate?**

88 The OPA does not have any specific recommendations at this time with respect to the factors
89 that the Board should consider when determining whether a party primarily represents a public
90 interest relevant to the Board's mandate. The OPA looks forward to the opportunity to
91 participate in discussions on this topic throughout the remainder of this consultation.

92 **3. What conditions might the Board appropriately impose when determining the eligibility of**
93 **a party for costs? For instance, what efforts should the Board reasonably expect a party to**
94 **take to combine its intervention with that of one or more similarly situated parties? Should**
95 **the Board reasonably expect parties representing different consumer interests to combine**
96 **their interventions on issues relating to revenue requirement (as opposed to cost allocation)?**

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97 The OPA submits that the cost award process should be a fair process and one that is inclusive
98 of those demonstrating financial need. Broad participation and representation is beneficial to
99 the regulatory process. In addition to the conditions currently imposed by the Board in
100 determining cost eligibility in its *Practice Direction on Cost Awards*, the OPA submits that
101 additional conditions governing participation of intervenor counsel for cost eligible parties, such
102 as a maximum for the number of counsel hours that can be claimed based on anticipated
103 length and complexity of the proceeding could be of benefit to the ratepayer. These hours
104 could be adjusted by the Board if the proceeding is more complex and lengthier than originally
105 thought. Similar governance is already undertaken by non cost eligible parties (e.g. OPA, IESO,
106 Hydro One, Local Distribution Companies) as these parties operate within approved regulatory
107 budgets, and such governance is ultimately of benefit to the ratepayer.

108 **4. Should the Board consider different approaches to administering cost awards in**
109 **adjudicative proceedings? For instance, should the Board consider adopting an approach that**
110 **provides for pre-approved budgets, pre-established amounts for each hearing activity (similar**
111 **to the approach for policy consultations), and pre-established amounts for disbursements?**

112 The OPA believes that adopting an approach that provides for pre-approved intervenor hours
113 and costs in each hearing activity would promote efficiency. The OPA submits that such an
114 approach would benefit from the flexibility to allow adjustments to these pre-approved items,
115 should intervenors exceed the pre-approved amounts but can appropriately demonstrate the
116 value of the additional work undertaken to the Board. Conversely, the OPA submits that the
117 Board should continue to award lower costs than claimed if the Board believes the intervenor
118 has not demonstrated the value it claims.

119 **Recommended Modifications**

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

122 The OPA does not have any specific modification suggestions at this time, but may provide
123 recommended modifications following the first round of comments and the completion of the
124 stakeholder conference.

125 The OPA appreciates the opportunity to provide comments on this matter and looks forward to
126 participating in any further initiatives on this subject.