



September 27, 2013

By RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: OEB Review of Framework Governing the Participation of Intervenors in Board Proceedings –Board File No. EB-2013-0301 –Large Distributors –Phase One Submission

1. Pursuant to the Ontario Energy Board’s (hereinafter “OEB” or “the Board”)’s directions set out on page 4 of the Board’s notice of Consultation and Stakeholder Conference issued August 22, 2013, the following comments are submitted on behalf of a group of Large Distributors consisting of Enersource Hydro Mississauga Inc, Horizon Utilities Corporation, Hydro Ottawa Limited, PowerStream Inc, and Veridian Connections Inc. (hereinafter referred to as “the Large Distributors”).
2. The Large Distributors value the input received from their customers and stakeholders through their participation in the OEB’s policy hearings and rate applications and consider their contributions to be key ingredients to the Board’s informed and transparent decision making processes. The Large Distributors recognize that effective stakeholder consultation processes help facilitate an open, transparent and sustainable energy sector to the benefit of all stakeholders. As an outcome of this proceeding, the Large Distributors seek modifications and refinements to the Board’s existing approach to determining intervenor status and cost eligibility that encourage efficient and cost effective participation without being administratively burdensome.
3. The Large Distributors have organized their submission in two parts. In the first part the Large Distributors identify proposed modifications to the current intervenor process and in the second part the Large Distributors provide proposed modifications to the Board’s *Rules of Practice and Procedure* (“the Rules”) and the Board’s *Practice Direction on Cost Awards* (“Practice Direction”).



1.0 Proposed Modifications to Current Intervenor Process

1.1 Intervenor Status

1.1.1 *Substantial Interest in a significant issue*

4. The Large Distributors propose that the Board adopt measures to ensure that intervenors eligible under section 3.03 of the OEB’s Practice Direction are required to disclose their substantial interest in a significant issue or issues under consideration in the proceeding. In other words, it should not be sufficient for an intervenor to claim that they have an interest and are eligible, but rather they should be required to disclose the nature of their interest and the major issues their precise interest relates to in the proceeding.¹ This measure will serve to focus the intervenor’s contributions (and interrogatories) to only those matters that are of relevance and potentially impacting on their constituents. The Large Distributors note that the requirement for intervenor applicants to articulate up front the substantive issues to which they will focus their participation is a requirement of the British Columbia Utilities Commission² and the Yukon Utilities Board.³

1.1.2 *Evidence of representation*

5. The Large Distributors do not believe that it is necessary to require evidence from intervenors illustrating receipt of requisite authorization to represent a group or class of stakeholders in every OEB proceeding. The Large Distributors are satisfied that many of the intervenors that currently represent stakeholder groups do so with expert knowledge of the issues and concerns of their respective constituency. Where the validity of a stakeholder group’s representation is in question, the Board may, pursuant to its own discretion, request evidence illustrating that the intervenor does have the necessary authorization and mandate from the stakeholder group it claims to represent.

Summary of Recommendations Re: Intervenor Status

- Adjust section 3.03 of the OEB’s Practice Direction to require that intervenor applicants disclose their substantial interest in a significant issue or issues under consideration in the proceeding;
- Do not require evidence from intervenors illustrating receipt of requisite authorization to represent a group or class of stakeholders in every OEB proceeding, but provide such evidence when requested to do so by the Board.

1.2 Cost Eligibility

1.2.1 *A priori filing of budget*

6. To be eligible for costs, intervenor applicants should be required to disclose how the participation by its legal counsel and other representatives will be governed for each stage of the proceeding. In

¹ Parties having a substantial interest in the outcome of a proceeding should be required to articulate in fairly precise terms the issue(s) that concerns them the most and how a determination on such issue would be impacting to the constituency they represent.

² British Columbia Utilities Commission Participant Assistance/Cost Award Guidelines Section 118 of the Utilities Commission Act, Appendix A to Order No. G-72-07 –http://www.bcuc.com/Documents/Guidelines/2011/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf

³ Yukon Utilities Board, Rules of Practice, Order 1995-2, Section 24(1).



particular, the Large Distributors recommend that intervenor applicants be required to estimate the number of hours their legal counsel, and/or consultants will require to study the application and prepare their representations for each stage of the proceeding. Establishing *a priori* budgets is not administratively burdensome and will focus the effort of intervenors for each part of a proceeding.

7. The Large Distributors note that establishing *a priori* budgets in advance of a proceeding is used by the Régie D'Énergie de Québec⁴ and the British Columbia Utilities Commission.⁵

1.2.1 Evidence of engagement

8. Looking to the future, the Large Distributors note that, in the case of rate applications and new applications, the onus may fall to distributors to engage stakeholders as appropriate and, through their own processes vet stakeholder engagement. To be eligible for costs in a rate or new application proceeding following the pre-filing stakeholder engagement, the Large Distributors recommend that intervenors who attended a pre-filing stakeholder engagement process (if any) attest to their participation and set out any unresolved issues.

Summary of Recommendations Re: Cost Eligibility

- Adjust section 3.03 of the OEB's Practice Direction on Cost Awards to require that intervenors establish a budget for the number of hours their legal counsel, and/or consultants will require;
- Intervenors who attended a "pre-filing" stakeholder engagement process (if any) should be required to attest to their participation and set out any unresolved issues.

1.3 Cost Awards

9. Section 5.01 of the Board's current Practice Direction on Cost Awards sets out a number of principles that the Board considers when determining the amount of a cost award a party may be entitled to receive. In addition to the principles set out in section 5.01, the Large Distributors submit that to be eligible for a cost award, the Board should require that cost claimants provide evidence demonstrating:
 - a. That they participated in any pre-filing stakeholder engagement process, if applicable;
 - b. That the claimant's submissions were focused on a substantial interest and that their contribution was relevant to the intervenor's stated interest and within scope;
 - c. That their contribution offered a unique viewpoint rather than merely repeating the views expressed by other parties;
 - d. That they took proactive measures to avoid duplication of efforts; and
 - e. That the time claimed is within the pre-filed budget parameters.

⁴ Section 7 of Régie de l'Énergie de Québec: Intervenor Costs Payment Guide available at: http://www.regie-energie.qc.ca/en/regie/IntervenorCostsPaymentGuide_2003.pdf

⁵ British Columbia Utilities Commission Participant Assistance/Cost Award Guidelines Section 118 of the Utilities Commission Act, Appendix A to Order No. G-72-07 – http://www.bcuc.com/Documents/Guidelines/2011/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf



10. The Large Distributors submit that cost claimants should also be required to demonstrate that their conduct throughout the proceeding was responsible and that the costs claimed are reasonable and necessary. To assess the reasonableness of costs, especially for the revenue requirement portion of a rate hearing, the Large Distributors recommend that cost claimants should be required to demonstrate in their cost claims where they have shared the work. Specifically, the cost claimants must provide evidence of how the different issues under revenue requirement were allocated amongst the intervenors and that there was no duplication of efforts. This would also apply to common issues in policy proceedings.

Summary of Recommendations: Re: Cost Awards

- Ensure proactive measures are taken by the stakeholder representatives to coordinate their representation in a manner that reduces or eliminates duplication of efforts. Absent evidence of such coordination, the Board should adjust cost claims accordingly.
- Cost claimants should also be required to demonstrate that their conduct throughout the proceeding was responsible and that the costs claimed are reasonable and necessary pursuant to predefined criteria.
- The Board should provide for pre-approved budgets with pre-established amounts for each hearing activity in a proceedings; and
- The Board should reject final costs that exceed the pre-hearing budgets unless the excess amounts are fully justified.

1.4 Role of Board Staff

11. The Large Distributors recommend that the OEB clarify the role of Board Staff in the context of rate applications and policy proceedings. Specifically, the Large Distributors seek clarification as to whether the Board Staff are acting as advisors to the Board or as an intervenor in the proceeding.

2.0 Recommended Modifications to Practice Direction

12. On page 4 of the consultation document the Board asks whether it should make further modifications to the Rules and the Practice Direction. The Large Distributors support making the following changes to reflect the comments made above.
- a. Add a stipulation in section 2.01 noting that the Practice Direction does not restrict the Board's discretionary power to determine the validity of intervenor's contributions or whether costs incurred are reasonable or necessary;
 - b. Section 3.03 should include a stipulation that the intervenor applicant must articulate the substantial interest it holds in relation to significant issues in the proceeding; alternatively, the Board may wish to add a new section between 2 and 3;
 - c. Adjust section 3.03 of the OEB's Practice Direction on Costs to require that intervenor estimate the number of hours their legal counsel, and/or consultants will require to study the application and prepare their representations for each stage of the proceeding;
 - d. Augment the principles in section 5.01 as specified above;



- e. Adjust section 4.01 to stipulate the intervenor application must articulate interest and set out an estimated budget; and
- f. Modify section 6.03 to specify that where applicants fail to justify cost claims, they may have the cost reduced or rejected.

Respectfully,

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