



Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319, 27th Floor
2300 Yonge Street
Toronto, ON M4P 1E4

Re: Review of Framework Governing the Participation of Intervenors in Board Proceedings

AMPCO Comments

Board File No. EB-2013-0301

Dear Ms. Walli:

We are pleased to submit to you our comments regarding the Ontario Energy Board review of the framework governing the participation of intervenors in applications, policy consultations and other proceedings before the Board.

We understand the objective of the review is to determine whether there are ways in which the Board's approach to intervenors might be modified in order to better achieve the Board's statutory objectives. The first phase will examine the existing framework and any modifications to intervenor status, cost eligibility and cost awards. The second phase will examine whether the Board should consider adopting a different model regarding the representation of consumer interests in Board proceedings.

The Board's letter of August 22, 2013, poses a number of questions. AMPCO's comments reflect our consideration of these questions and our decades of experience appearing before the Board as intervenors and participants in a wide range of consultations initiated by the Board.

AMPCO seeks intervenor status and cost award eligibility in electricity rate applications and broad policy consultations where AMPCO members have a substantial interest in the issues before the Board. If we see no issue, we typically do not intervene.

AMPCO, like other intervenors, retains consultants and legal counsel for technical expertise and advice, to engage with and seek direction from the AMPCO board and members on matters before the Board, and, where we elect to participate, to manage our participation in Board proceedings.

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AMPCO's participation in Board proceedings generally is funded by the Board, through intervenor funding in rate applications or specific guidelines the Board sets down for policy consultations. AMPCO has no additional budget to participate in regulatory proceedings. We have, in the past, issued special appeals to members for additional levies to support specific projects, including Board proceedings, but these instances are exceptional. Full-blown OEB proceedings are expensive and can create significant financial risks for an organization like AMPCO, particularly where cost recovery is a matter decided by the Board at the very end of what can be a lengthy process. We seek to represent our members' interests on all matters that interest them, but we must be sure that our participation in any and all consultations and proceedings in which we might participate is funded; we must operate within our means.

AMPCO's Board of Directors generally approves the applications in which AMPCO intervenes, the issues to be pursued and the retention of consultants and legal counsel as needed. AMPCO's board meets regularly—a minimum of 6 times per year—and more frequently as required. AMPCO's board is elected by the membership, with 15 members elected and two directors ex officio.

AMPCO's regulatory representatives engage directly with AMPCO differently depending on the scope of the application. If the issues affect all AMPCO members and the broader industrial consumer base, AMPCO's regulatory representatives consult with AMPCO's Board of Directors in person at scheduled Board meetings or through email correspondence depending on the issues. If the issues in an application affect only one or a few AMPCO members, AMPCO representatives consult directly with those members to discuss how they are affected by the application and seek input and direction on AMPCO's position. As part of this process, AMPCO members rely closely on the expertise and advice of AMPCO representatives representing their interests in Board proceedings and policy consultations.

We want to make sure, throughout these regulatory processes, AMPCO members feel that the issues that are important to them are being addressed.

There are many aspects of the Board's current framework for intervenor participation that work well. Any change should pass a basic test, i.e., that it will promote efficiency and better protect the interests of consumers.

The Board's current framework, for funding a range of eligible participants based on broadly defined consumer and public interest perspectives, allows for diverse views to be represented in proceedings. By itself, this diversity contributes to better examination and understanding of the issues. At the same time, the relatively inclusive nature of the Board's current framework brings a degree of legitimacy that a more private or exclusive process might lack. The participation of public and consumer interest organizations—across a spectrum of interests—brings obvious credibility to these regulatory processes.

We understand that intervenor funding adds costs to rate-payers. That is why we intervene only where we identify a substantial interest for our members. If the process is to include or encourage participation by consumer or public interests, it is a necessary and realistic expectation that this work be funded. It is also necessary and realistic to expect that intervenors, like applicants, be held to a high bar. Our members expect us to deliver value to



them. We think it is reasonable that the Board have the same expectations of us and our members.

AMPCO, like other intervenors, has provided expert evidence and witnesses from time to time on issues before the Board. The Board itself has expressed its appreciation for some of this work. In AMPCO's experience, many applicants value the input of intervenors in the regulatory process as leading to better outcomes overall.

In most proceedings, AMPCO works with other intervenors, to collaborate in the approach to applications, to leverage specific skills or expertise in which one organization may have an advantage over another, and to minimize duplication. Intervenors consult with one another during the writing of interrogatories, prior to technical conferences, settlement conferences and before hearings to discuss priority issues and avoid duplication of effort. This is not the same, however, as working in directed coalitions or joint interventions. The challenges of governing such interventions, while engaging our own Board and membership, make it difficult and expensive. We see alignment more as an outcome arrived at, rather than one that is pre-ordained. Intervenor positions, like those of the Board and its staff, are arrived at through a process of discovery. The testing of propositions by a range of parties in Board proceedings leads to better outcomes for consumers, applicants and the Board.

AMPCO wishes to acknowledge the important role Board Staff play in the regulatory process. It is important, however, to acknowledge the value that comes from having Board Staff and intervenors together working to balance the various interests represented or affected by applications before the Board.

In this review, the Board is assessing whether any modifications to intervenor status, cost eligibility and cost awards is required and if any modifications should be made to the Board's Rules and Practice Direction. AMPCO submits that the Board currently has the powers to address any issues that are at play in the current process. The Board's Rules of Practice and Procedure (Revised January 17, 2013) includes direction on intervenor status (Rule 23), and cost eligibility and awards (Rule 41). The person applying for intervenor status must satisfy the Board that he or she has a substantial interest. Rule 23 reflects information to be included in a letter of intervention which includes a description of the intervenor and its membership, if any. AMPCO's interprets this to mean that membership is not a requirement so as not to limit participation of parties that can demonstrate they have a substantial interest. As such, AMPCO submits that the Board need not be more prescriptive and should not specifically require that a party demonstrate consultation or engagement with a class of consumers directly affected by the application.


The Board's Practice Direction on Cost Awards (Revised March 19, 2012) includes a section on Principles in Awarding Costs that is applied in determining the amount of the cost award to a party. AMPCO submits that the Board's recent cost award decisions reflect consideration of these principles. AMPCO submits that if an intervening party is consistently acting in an

inappropriate way that violates the Board's Practice Direction, the Board already has the powers to express its concerns.

In AMPCO's view, the \$5.5 million in costs awarded by the Board during the 2012-2013 fiscal year (to 38 eligible intervenors) is not unreasonable given the overall amount of revenue requirements approved by the Board.

We appreciate the opportunity to make these submissions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Adam White', with a stylized flourish extending to the right.

Adam White
President
Association of Major Power Consumers in Ontario