

16 October 2013

**by RESS and Mail**

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

Dear Ms. Walli:

**Subject: Further Comments – Review of Framework Governing the Participation of  
Intervenors in Board Proceedings – Consultation and Stakeholder Conference.  
Board File No. EB-2013-0301**

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1. Allstream Inc. (Allstream) is in possession of the written comments of numerous other parties to the above noted consultation and is pleased to submit its further comments. Failure by Allstream to address any argument or issue raised by other parties should not be construed as agreement with or acceptance of such argument or issue where to do so would be contrary to Allstream's interests.
2. Allstream reiterates that its comments in this consultation are restricted to the issue of cost awards in proceedings to resolve disputes between electricity companies and telecom companies. In Allstream's view, this issue engages the public interest and while within the scope of this proceeding, can be viewed separately from the more general issues addressed on the record to date.

**I. Total Regulatory Costs and Cost-Benefit Analysis**

3. Several parties have argued that the total regulatory costs of intervenors in Board proceedings are not high when viewed in the context of the total regulatory costs of the Board and electricity companies.<sup>1</sup> Moreover, parties have noted that the costs of

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<sup>1</sup> See for example, CME Written Comments, September 27, 2013, p. 7, s. H(a). "We respectfully suggest that the ratepayer funded \$5.5 million amount for the representations made by the broad range of interests encompassed by the cost eligible intervenor constituency is miniscule to the total of the ratepayer funded regulatory costs which the Board and the regulated utilities incur".

intervenors are a fraction of the “savings” delivered to ratepayers through Board processes and attributed such savings at least in part to the participation of intervenors.<sup>2</sup>

4. Allstream notes that this cost-benefit analysis is simply not applicable to proceedings concerning telecom company access to electricity company facilities. In such proceedings, the public interest as recognized by the Board is most immediately engaged by the issue of duplication of support structures, which is not easily measured as a dollar value. And while such proceedings indirectly impact certain costs to certain ratepayers (i.e., cost of telecommunications services), this impact is much less direct than the impact of rate setting proceedings on electricity ratepayers.
5. Moreover, in support structure access proceedings, the relevant perspective is the impact of costs on the applicant. As noted in Allstream’s initial written comments, the level of costs often seen in Board proceedings can be prohibitively high to the telecom company applicant. The effect can be to preclude the hearing of cases that, having regard to the public interest, should be heard. As such, even if the Board concludes that total intervenor costs are acceptable, the Board should nevertheless consider the impact of intervenor costs on telecom company applicants and the consequent neglect of the public interest. In Allstream’s view, it is appropriate to address this impact either through general measures to limit the cost of proceedings or specific measures to limit the impact of cost awards on telecom company applicants. Put another way, in distinction to the comments of many other parties to this proceeding, Allstream’s submissions are not only about the cost of proceedings but also the apportionment of responsibility for those costs.

## **II. Responsibility for Applicant Costs**

6. Some parties have noted that electricity ratepayers ultimately (though indirectly) fund the Board and distributor applicants.<sup>3</sup> It has been suggested that since ratepayers fund

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<sup>2</sup> See for example Submissions of the School Energy Coalition, para. 2.2.19. “SEC believes that we can safely say that the Ontario regulatory process saves the ratepayers considerable sums of money each and every year, probably in the order of many hundreds of millions of dollars. We can also safely say that the Ontario intervenor model is a [sic] important factor allowing the Board to achieve that result”.

<sup>3</sup> See for example Submissions of the Consumers Council of Canada, September 27, 2013, page 5. Submissions of the School Energy Coalition, para. 1.2.2.

applicants that do not necessarily represent the interests of the ratepayers,<sup>4</sup> it is appropriate that groups representing ratepayer interests be entitled to participate in regulatory proceedings and that it may be appropriate for shareholders to be responsible for some regulatory and lobbying costs of the electricity companies.<sup>5</sup>

7. Allstream submits that this analysis too does not apply to proceedings brought by telecom companies. A telecom company applicant is not funded by electricity rate payments, so it cannot be said that electricity ratepayers fund the regulatory costs of a telecom company applicant. In Allstream's view, this further suggests that a separate intervenor participation or cost award procedure is appropriate for telecom company applications if the general procedure remains in its current form.

### **III. Conclusion**

8. Allstream submits that proceedings regarding telecom company access to electricity company support structures are a unique and important function of the Board. These proceedings raise unique issues regarding cost awards, issues that are not currently addressed by Board policies. Allstream encourages the Board to adopt rules, either general or specific to this type of proceeding, that will ensure access to the Board is not blocked by cost awards that are either too high or inappropriately apportioned.

Yours truly,



for Teresa Griffin-Muir  
Vice President, Regulatory Affairs

c.c: David Peaker, (613) 688-8693

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<sup>4</sup> Submissions of the School Energy Coalition, para. 1.2.3.

<sup>5</sup> Submissions of the School Energy Coalition, para. 1.2.3.