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April 29, 2022

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Our File No. 221741

**VIA RESS AND EMAIL**

Ontario Energy Board  
2300 Yonge Street  
27th Floor  
Toronto, Ontario  
M4P 1E4

Attention: Nancy Marconi, Registrar

Dear Ms. Marconi:

**Re: EB-2022-0011: Framework for Review of Intervenor Processes and Cost Awards**

Attached, please find BOMA's Comments with respect to this matter.

Yours truly,

**FOGLER, RUBINOFF LLP**

A handwritten signature in black ink, appearing to be 'A. Engel', written over a horizontal line.

Albert M. Engel

AME/dd  
Encl.

**ONTARIO ENERGY BOARD**

**Framework for Review of Intervenor Processes and Cost Awards**

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**COMMENTS OF  
THE BUILDING OWNERS AND MANAGERS ASSOCIATION ("BOMA")**

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**April 29, 2022**

**Albert M. Engel**  
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**Counsel for BOMA**

## Identified Concerns

*1. Are there concerns other than those identified in this report, related to intervenor processes, or cost awards that the OEB should examine?*

The Framework report provides thoughtful and comprehensive coverage of the issues. The goals are clear and appropriate, and the 3-pronged strategy makes sense to BOMA. BOMA offers the following comments for greater clarity around context with respect to commercial and multi-residential buildings:

- BOMA's primary interests are cost, security of supply and alignment with the low carbon transition, including access to meter data. BOMA generally avoids proceedings which do not relate directly to these areas, in particular mechanistic ones.
- BOMA notes that these are rapidly changing times for the buildings industry and the energy sector due primarily to the climate change agenda, and process changes at the OEB need to support adaptation to substantive, structural change.
- BOMA views individual proceedings as the opportunity to not only represent member interests but also to provide a complete range of perspectives and expertise which can help produce the best overall determinations.
- BOMA values the broad/comprehensive range of representation in these proceedings, including residential and industrial sectors and low income and indigenous communities. Within the commercial sector, each segment has its own circumstances, and it is not clear to BOMA if/how all are represented. Commercial (BOMA), K-12 schools (SEC) and multi-residential (FRPO) as well as small business (SBUA) are explicitly at the table. Pollution Probe appears to speak on behalf of municipalities. Healthcare and post-secondary do not seem to be directly represented.

## Clarifying Application Expectations

*2. Are there other initiatives that the OEB should consider to better clarify application expectations and result in more efficient proceedings?*

- BOMA finds the use of Issues Lists very helpful in determining its interests in a proceeding, focusing attention on what matters and making it easier to follow the application and collective evidence and arguments towards the final determination. BOMA would welcome greater use of this approach, for example in the current DER (EB-2021-0117) and Green Button (EB-2021-0183) proceedings.

## Intervenor Status: Substantial Interest

*3. How should the OEB define substantial interest for leave to construct applications?*

*4. How should the OEB define substantial interest for rate applications?*

5. *Are there other types of applications for which substantive interest needs to be further defined?*

6. *Are there other changes the OEB should consider with respect to accepting intervenors into proceedings?*

- BOMA assesses its “substantial interest” in all types of applications and proceedings against the three criteria in BOMA Response 1 above. BOMA also engages in occasional proceedings which do not directly affect its members but which it considers signals of important trends, such as the TOU Rate hearing (EB-2022-0074) as it relates to demand response and the price differential between electricity and natural gas.

#### Cost Awards

7. *What more could the OEB do to encourage greater collaboration of intervenors with similar views on issues and similar interests?*

- BOMA believes the OEB’s expectation of collaboration is clear and that it happens now to a significant extent between individual intervenors. The process might be formalized by greater use of Issues Lists at the outset, requiring intervenor applications to respond to individual issues of interest, having OEB staff promote collaborations where common interests are stated and giving greater weighting/time to joint submissions.

8. *Should parties representing for-profit interests be eligible of cost awards?*

- Parties representing the direct interests of ratepayers in relation to services that are regulated by the Board should be eligible of costs awards whether those ratepayers are for-profit or not-for-profit. Either type of ratepayer should have equal opportunity to present their views to the Board, which is what the current costs eligibility requirement ensures. BOMA is a member-focused organization that promotes and advances best management practices through proactive advocacy, exceptional education, mentorship and networking. It has a diverse membership with varying interests. It always aims to be an active and responsible participant in OEB proceedings, bringing expertise and perspective as well as representing its members. It is not clear that BOMA would be able to continue its historic levels of participation without cost recovery. BOMA also argues that its situation is not materially different from public sector associations which also represent their members in these proceedings.

9. *Is there a better way to represent the interests identified by individual rate payers?*

- BOMA takes direction from its Energy Committee in these proceedings and is not aware of any individual rate payers among its membership who are interested in direct representation.

#### Frequent Intervenor Filings

10. *How should the OEB proceed with the annual filings currently required from frequent intervenors?*

- BOMA believes that more fulsome intervenor filings could support more active case management by the OEB, enabling better matching of intervenor interests with individual proceedings while reducing overall administrative costs for all parties.

#### Use of Expert Witnesses

*11. Are there other changes that the OEB should consider to clarify the requirements for experts filing evidence and the related requests for cost awards?*

- BOMA considers the current process for inviting, evaluating (including proposed budgets) and managing expert evidence to be effective and sufficient.

#### Active Adjudication

*12. Are there other ways Commissioners can enhance their approach to active adjudication while ensuring procedural fairness?*

- BOMA has no additional comments in this area.

#### Oversight of Scope of Proceedings

*13. Are there other tools that the OEB could employ to ensure that the scope of a hearing and materiality of issues is clearer earlier in the proceeding?*

- BOMA would welcome greater use of Issues Lists as discussed above.

#### Generic Proceedings

*14. Are there existing issues that do not currently have policy development work underway, which should be addressed through generic hearings instead of through individual applications?*

*15. Are there other changes that the OEB could consider with respect to generic proceedings?*

- BOMA does not generally participate in proceedings where generic issues apply and therefore has no comments in this area.