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April 29, 2021

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Marconi,

RE: EB-2022-0011 – Framework for Review of Intervenor Processes and Cost Awards – Comments of London Property Management Association

INTRODUCTION

In March 2021, the Ontario Energy Board ("OEB") issued a report on the results of its Top Quartile Regulator project. This initiative was designed to move the OEB towards regulatory excellence and was the response to the recommendations of the OEB Modernization Review Panel.

This Framework for Review of Intervenor Processes and Cost Awards report dated March, 2022 ("Report") is focused on intervenor processes and cost awards. Any changes implemented as a result of this initiative are expected to improve the OEB's adjudicative process and enhance the experience for all parties.

These are the comments of the London Property Management Association ("LPMA") associated with this initiative. LPMA appreciates the opportunity to provide feedback to the OEB on the Report.

LPMA is a non-profit organization whose overall goal is to help property managers and those who own/operate residential income properties in the City of London and surrounding communities. LPMA offers information and assistance to its members to help them deal with the legislation, rules and regulations that affect their business.

LPMA is made up of approximately 400 owner and landlord members ranging from single unit owners to managers and owners of in excess of 2,000 units. The membership consists of a representative cross section of the rental property owners in the London area. In total, the LPMA members own or manage more than 35,000 rental units in the London area.

LPMA members are generally residential and small and midsized commercial customers that pay regulated distribution rates. In particular, LPMA members receive regulated electricity distribution services across a number of rate classes. They also receive regulated electricity transmission services and many members continue to purchase regulated power generated by Ontario Power Generation. In addition, the members also receive regulated natural gas distribution services across a number of rate classes.

GENERAL COMMENTS

The current regulatory system in Ontario already provides customers of monopoly service providers a strong and diverse voice before the OEB. There is no need for significant changes in the current intervenor processes and cost awards, but there are areas that can be improved.

LPMA believes that the outcome of this Report should be a regulatory system that has stronger and better customer representation, combined with a reasonable cost of doing so. This stronger and better customer representation should be on par with the resources (and costs) employed by utilities. A level playing field between intervenors and utilities should be a key outcome of this review.

1. The OEB Already Has the Tools

The OEB already has the tools to deal with intervenor processes and cost awards. It can deny a party intervenor status if they do not believe that party has adequately explained their need to intervene in a particular proceeding. Similarly, the OEB can deny cost eligibility to an intervenor based on the Practice Direction on Cost Awards.

The OEB can disallow costs to intervenors if it has sufficient reason to do so, such as spending too much time on immaterial issues, issues that were out of scope, or not providing sufficient value to the Board to warrant the level of an award being claimed. It is not clear what else the OEB needs with respect to intervenor processes and cost awards. It just has to use what it already has.

2. Ratepayers Pay for Everything

Some parties complain of the additional costs associated with intervenors. However, these parties do not pay these costs. Ratepayers pay these costs, along with all of the utility related regulatory costs and all of the OEB costs. In fact, utilities can profit from cost awards when the actual amount billed by intervenors for a proceeding is less than what is embedded in the cost of service forecast. This impact is multiplied by a factor of 5 for a standard cost of service rebasing application that is followed by 4 (or more) years of IRM rate increases. This is an unnecessary burden for ratepayers and an unnecessary windfall for utilities.

The OEB should consider requiring utilities to remove their forecasted cost of a proceeding – both for intervenors and external lawyers and consultants – from their cost of service revenue requirement calculation. Once the actual approved costs for intervenors and external lawyers and consultants for the utility are known, the OEB should direct the utilities to put these costs in a deferral account and amortize them over an appropriate period of time for recovery from ratepayers. Aside from the incremental carrying costs, this would provide protection to ratepayers from actual costs being lower than the amount built into rates and it would provide protection to utilities from actual costs being higher than the amount built into rates. In both cases, utilities are no better or worse off and ratepayers pay the actual costs, including the actuals costs of their representatives.

3. Grassroots Customer Representation

The OEB should be thankful for the grassroots customer representation that has evolved in Ontario and the Board should take some credit for that. LPMA believes that the current intervenor process and cost award eligibility process adds value and results in improved decision making by the Board. That being said, LPMA believes that there is room for improvements to the existing system. The responses to the questions in Appendix B of the Report provide some suggestions for these improvements.

It was not that many years ago that the OEB noted a lack of representation for small and medium sized industrial ratepayers in natural gas proceedings. While various associations were involved on behalf of residential, small commercial, large commercial, institutional and large industrial customers, there was a hole in the representation of a significant number of small and medium sized industrial customers that consumed significant amounts of natural gas. At that time the OEB encouraged those ratepayers to find or create an association that could represent their interests in the natural gas proceedings.

In other words, there should be an objective that all types of customers have equal access to OEB proceedings. This equal access should include eligibility for cost awards.

The regulatory system is needed to serve and protect customers from monopoly service providers. Ensuring that these customers are well represented in the regulatory process should be of supreme importance to the OEB, as is the need to ensure that customers have an equal footing with utilities in being able to be properly represented in regulatory proceedings. Afterall, under the current methodology, customers pay for everything while utilities pay for nothing.

4. Diversity of Opinions, Issues & Approaches

The OEB should value diversity: diversity of customers represented; diversity of opinions from with groups of similar customers; diversity of importance of issues; and diversity among groups of how they approach a proceeding.

Economic regulation is needed to create a system that replicates the outcomes of competition in terms of consumer prices, quality of services and financial well being of both customers and utilities. The protection of consumers' interests is at the center of the need for economic regulation. The end result of economic regulation is rates that are just and reasonable and utilities that are financially viable.

LPMA believes that intervenors are critical in the success of this outcome and that the current intervenor construct is working well and provides significant value to ratepayers.

The existing intervenor community in Ontario is diverse in many ways. It is diverse in the types of consumers that are represented. It is diverse in the importance of issues and in the position on issues that arise in a proceeding. It is diverse in approaches to dealing with the issues. It is diverse in the way utility applications are assessed. It is diverse in the viewpoints brought to an application. It is diverse in the backgrounds of the lawyers and consultants that represent these groups of consumers. Some come from utilities; some come from other regulated industries; some come from government. They include accountants, engineers, economists, policy analysts, statisticians and many more professions. The composition of intervenors is not unlike the composition of the commissioners. Diversity improves interventions just as diversity improves decisions.

The OEB makes decisions in the public interest. Intervenors are representatives of that public and the public has a wide diversity of views and goals. The expertise and diversity of intervenors leads to a broader testing of the evidence and a larger variety of submissions on issues that the Commissioners can rely upon in reaching quality decisions than would be the case with a diminished diversity of intervenors.

The one area where there is less diversity between intervenors is their objective of protecting ratepayers and ensuring that the OEB has the information it needs to make quality informed decisions.

5. Real Cost of Intervenors Has Declined

The OEB last updated its cost award tariffs in 2007. The allowed rates for cost award purposes paid to legal counsel and consultants has remained at the same level for more than 14 years. Rates paid by utilities for external legal counsel and consultants have not been frozen over this period as market rates have risen, along with inflation. In real terms, the rates paid by utilities for their legal counsel and consultants has at least stayed the same or increased. The same cannot be said for the legal counsel and consultants employed by intervenors.

According to information from Statistics Canada, the consumer price index for all items has risen by approximately 27% since 2007. The increase for Ontario is slightly higher at about 29%. Given that there has been no increase in the cost award tariffs, this means that the real rates for intervenors have declined by about 1.7% per year on a compounded annual basis.

This imbalance in allowed costs between intervenors and utilities creates an uneven playing field, one that is slanted in the favour of utilities who can recover all of their legal and consulting costs from ratepayers, while the organizations that are representing the very same ratepayers have limits imposed on them. Utilities are better able to attract seasoned and experienced lawyers and consultants than are intervenors simply because they are allowed to pay them more and recover all of the costs from ratepayers.

LPMA believes that this imbalance needs to be addressed by the OEB.

One way would be to review the cost award tariffs and update them to reflect current market rates for legal counsel and consultants. LPMA does not support this approach since it would increase intervenor costs and thereby increase the amounts recovered from ratepayers.

A second way would be to limit the amount that utilities can recover through the revenue requirement for their external legal counsel and consultants to the same rate tariffs as are currently in place for intervenors. Any costs above these rates would not be recoverable from ratepayers and would be borne by the shareholder. LPMA supports this approach. It provides a more level playing field and provides an incentive for utilities to keep these costs down. Equally important is that it would reduce the costs that are ultimately recovered from ratepayers.

A third option would be similar to the second one above in that the same rate tariffs would be applied to intervenors and to utilities for the amounts to be included in the revenue requirement and recovered from ratepayers. The difference here would be that the OEB could gradually increase the current rate tariffs on an annual basis, perhaps at the rate of inflation. LPMA would support this option assuming that the reduction in recoverable utility expenses would be equal to or greater than the increase in intervenor costs, again providing a net benefit to the ratepayers.

All three options highlight the need for a level playing field noted above as being a key outcome of this review. The second option noted above, and potentially the third, would also reduce the costs that are paid by the customers. The result would be a more balanced regulatory system and lower costs for customers.

6. Need for Data Driven Analysis

The OEB has taken major steps in its benchmarking of utilities through data analysis. LPMA believes that it should also be taking steps to understand what drives intervenor costs in individual applications. This could enable the OEB to determine if the intervenor costs for a specific application are out of line with other applications. It could also provide the OEB with a tool to set expectations of costs for an application that would provide guidance to intervenors and to the utility in its forecast of intervenor costs.

Based on the information provided in Table 1 of the Report, LPMA has done two simple regression analyses based on the data provided for 2013 through 2021 for electricity

distribution cost-based rate applications. The first is on the average cost award per application and the second is on the average cost award per intervenor.

Appendix A to these comments provides the regression analysis where the dependent variable is the average cost award per application and the independent variables are the number of applications > $500M and the average number of intervenors per application.

Using these two simple explanatory variables results in an adjusted R-squared value of 0.905, meaning that 90% of the variance in the average cost award per application is explained by these two explanatory variables. The first explanatory variable (number of applications > $500M) is statistically significant at a 95% level of confidence and explains much of the difference seen in the average cost awards per application in 2015, 2018 and 2019. The second explanatory variable (number of intervenors) is not significant at a 95% or even an 80% level of confidence. This means that there is no evidence to support the estimated coefficient being different than zero at an 80% level of confidence. In other words, the number of intervenors in an application is not a driver of the average cost award per application. However, at a lower 65% level of confidence, the number of intervenors is a statistically significant driver.

Appendix B to these comments provides a similar regression analysis where the dependent variable is the average cost award per intervenor. The same two explanatory variables are used in the analysis.

In this case, the first explanatory variable (number of applications > $500M) is statistically significant at a 95% level of confidence and the second explanatory variable (number of intervenors) is statistically significant at an 80% level of confidence.

It should be noted that the estimated coefficient associated with the number of intervenors variable is negative. This means that as the number of intervenors increase, the average cost award per intervenor decreases and as the number of intervenors decrease, the average cost award per intervenor increases.

LPMA believes that this analysis shows that intervenors are collaborating with one another, essentially sharing the load of reviewing an application and avoiding duplication where possible. If there was no collaboration among intervenors, the average cost award per intervenor would neither decrease or increase based on the number of intervenors.

While this analysis is based on limited data and averages by year, LPMA believes that it is a good starting point for the OEB to dive deeper in an analysis of the data related to cost awards. Instead of basing the analysis on the averages shown in Table 1 in the Report, it may make sense to consider each individual application as a set of data points. Additional explanatory variables should be tested for significance, such as applications that include an ICM/ACM, or applications that are custom IR applications as compared to cost of service applications. The OEB should also consider dividing the analysis into two sections, one for major applications and one for non-major applications.

In any event, LPMA believes that the OEB should consider ways to benchmark cost awards and to use this information. This does not mean, however, that the OEB should set a budget for a proceeding or budgets for intervenors at the beginning of an application. Rather, the benchmarking should be used as both a guide to intervenors on their costs at the beginning of a proceeding and for the OEB to identify situations where the costs are significantly different than expected.

CONSULTATION QUESTIONS

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 OEB should not review intervenor processes or cost awards in isolation. The OEB needs to review regulatory costs in total and look at the makeup of these costs.

As indicated on page 18 of the Report, total intervenor costs for both policy consultations and adjudicative proceedings have averaged $4.4 million per year over the last five years. These average annual costs represent less than 0.02% of the adjudicated total revenue requirements of $24.6 billion in 2020.

Absent from this Report is information related to utility and OEB costs related to policy consultations and adjudicative proceedings.

LPMA believes the OEB should provide an analysis/table that shows for each of the last 10 years the total regulatory costs incurred by ratepayers in Ontario broken down between intervenor cost awards, utility regulatory costs and OEB costs. The utility regulatory costs should be broken down between external legal and consulting costs, internal costs and OEB costs. The OEB costs associated with an application should reflect the hours spent by Board Staff reviewing the application. This would provide the OEB with an additional reference point to compare to the hours claimed by intervenors.

The $4.4 million per year average noted above for intervenor costs is dwarfed by an OEB budget approaching $50 million per year, which in turn is dwarfed by the regulatory costs of the utilities. It this was an adjudicative proceeding dealing with regulatory costs, the intervenor cost award portion would not likely be material.

Clarifying Application Expectations

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

Through updates to the filing guidelines, the OEB continues to make strides in ensuring that applicants provide better evidence that explains the actions they are taking and the costs incurred. This helps reduce the number of interrogatories from intervenors. In other words, the more complete the evidence, the less time intervenors require to ask interrogatories. There may not be any savings from a utility point of view since the time

to do a complete application filing may be the same as time doing a less complete filing combined with time to answer interrogatories. However, answering interrogatories come with a short time frame to respond, so the answers are sometimes less complete than if the evidence has included the requested information to begin with. LPMA believes that the OEB and most utilities have made significant strides in providing more complete applications than even a few years ago. Changes to the filing guidelines have provided a clearer roadmap to a complete application.

On the flip side, LPMA has noticed that some applications include information that is repeated over and over in different parts of the evidence. In LPMA's view, this does not enhance the completeness of the application, rather it just ways down intervenors with the task of spending more time going through the application without any corresponding incremental understanding of the application. Not only should an application be complete, it should also be concise. It is not clear to LPMA whether changes to the filing guidelines can enhance the conciseness of an application, but the OEB should investigate steps it could take to achieve this result.

Intervenor Status: Substantial Interest

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

LPMA believes that substantial interest for leave to construct applications should be broadly based to encompass landowner (and/or their associations) concerns for those that are impacted by the facilities proposed to be constructed; environmental groups that may oppose or support the construction of additional and/or specific facilities; and ratepayers (and/or their associations) that will be impacted by changes in regulated rates that will ultimately result from leave to construct applications and be paid for by these ratepayers for decades to come.

LPMA does not believe that ratepayers and/or their associations should be barred from participating in and receiving cost award eligibility in leave to construct proceedings and be told that they can deal with the costs of such projects in a rates case or ICM proceeding. By that time, it is too late for the ratepayers to participate in the need (or lack thereof) or the suggestion and review of alternatives to the proposed project. Ratepayers ultimately pay for whatever is built and they have the right to participate in entire process.

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

Any ratepayer that receives a regulated service from a utility, either directly (such as electricity distribution services) or indirectly (such has from an electricity transmitter) should be determined to have a substantial interest for a rate application.

Any party that is, or could be impacted, by a policy aspect included in a rate application, should also be considered as having a substantial interest. If they are not allowed to participate in and qualify for cost award eligibility, how will they be accorded an opportunity to review and participate in the policy question that may have a direct impact on them in another application? For example, if a Board decision sets a precedent on some issue for Hydro Ottawa that could have an impact on LPMA members if London

Hydro were to propose the same thing, would LPMA have lost its right and opportunity to deal with the issue if it was determined to not be eligible for a limited intervention and cost award eligibility (limited to the issue in question) in the Hydro Ottawa rate application?

LPMA believes that active adjudication should be the solution to this problem. All policy related issues should be removed from individual rate applications and be brought forward by the OEB in a generic policy forum, with proper notice given to all parties.

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

For policy initiatives and applications, the OEB should consider all parties that would be impacted by the policy or the change in the policy to have a substantive interest. This would include, but not be limited to, impacts on rates, impacts on services available to customers, impacts on the environment and impacts on reliability. It should be noted that ratepayers in different rate classes and different ratepayers with a rate class may have different views on all of these potential impacts.

There may be other types of applications where the definition of substantive interest needs to be further refined (either narrowing or broadening the scope of interests). These should be dealt with on a case-by-case basis as the need arises.

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

LPMA believes that the OEB should maintain the current approach to accepting intervenors into proceedings. It should also maintain the current approach to determining cost eligibility. Accepting a party or individual as an intervenor allows that party to have input into the proceeding. Denial by the OEB of intervenor status should only be done on an exceptional basis and with sufficient reasons provided.

A significant change that the OEB should make is with respect to determining the breadth, or scope, of the intervention. This should be done up front, with no surprises later on. The OEB should determine which intervenors would be considered all issue intervenors and which parties should be considered limited issue(s) intervenors. This, of course, means that the OEB will need to know what the issues are before they determine if a party should have a limited issue(s) intervention. It also means that intervenors need to identify the basis on which they are requesting an all-issue intervention or an issue(s) specific intervention.

Cost Awards

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

The question assumes that there is a need for greater collaboration of intervenors with similar views on issues and similar interests.

Intervenors with similar views on issues and similar interests already collaborate to the extent possible. Furthermore, this collaboration often extends to intervenors that do not share similar views and interests.

It should be noted that members of most associations, whether they be residential, commercial or industrial, often have diverse views and interests. Some may want a better or more reliable service at the expense of a higher cost because they value it as such, while others want lower cost even if it may result in a somewhat less reliable service. Some customers may want to shift costs from their rate class to another rate class which has other association members. Some members want lower rates now despite the probability of higher rate increases in the future, while others are willing to accept higher rates now with lower rate increases in the future.

The ability of these associations and their consultants and lawyers to bring these diverse views and interests together should not be overlooked by the OEB.

The OEB should also acknowledge that intervenors that represent "similar" groups of ratepayers and have similar views on issues and have similar interests can have very different approaches on an issue and an application. This diversity of approaches and opinions provides the OEB with the opportunity to see not just a public interest, but a range of public interests.

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

LPMA believes that not-for-profit associations that represent for-profit entities should continue to be eligible for cost awards. In the absence of this, the OEB may find itself having a significant number of entities requesting intervenor status in place of one association. Even if these entities were not eligible for cost awards, their status as intervenors would in all likelihood reduce the efficiency of the regulatory process just through the sheer increase in parties filing interrogatories, extending timelines for technical conferences and oral hearings and complicating the ability for settlement conference success.

If the OEB were to determine that ratepayers should not be paying for the cost for parties representing for-profit interests, and that any such party would have to pay their own costs for participating in the regulatory process, then it would only be just, reasonable and fair for the OEB to similarly determine that all of the costs incurred by all for-profit utilities – including the cost of the OEB itself – for participating in the regulatory process should not be paid for by ratepayers but rather should be paid for by the utility shareholders.

In addition, if the OEB were to determine that ratepayers should not be paying costs for associations representing for-profit interests, then the OEB should also deny cost recovery for all fees paid to utility-based associations/lobbyists, such as the Electricity Distributors Association, which represents the interests of for-profit electricity utilities.

As noted above, LPMA represents more than 400 owners and landlords of residential income properties in the London area. Most of these owners and landlords exist for profit, whereas LPMA is a not-for-profit organization. In the absence of eligibility for cost

awards, LPMA would not be able to participate in OEB proceedings that impact the regulated services and costs that are paid by its members.

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

While LPMA agrees that individual ratepayers should be accommodated through an existing approved intervenor that represents the ratepayers rate class, this is not always possible. For example, commercial customers fit into many different rate classes in both electricity and natural gas distributors. Further, intervenors are not always aligned with distinct rate classes.

Sometimes the interest of an individual ratepayer may not be sufficiently aligned with any intervenor group even if that group only represents customers in the same rate class. In such cases, it would not be appropriate for the OEB to deny the customer their right to participate as an intervenor and bring forward their own views on issues and their own interests.

The OEB has, in fact, answered this question, with the immediately preceding question. The best way to represent the interests identified by individual ratepayers is for them to form or join an association that can represent their views and interests and can ensure that these views and interests are communicated effectively to the OEB and all other interested parties. Whether these individuals, which could include companies, self-employed individuals, partnerships and/or corporations, are for-profit or not, should not determine if they are eligible for cost awards. After all, as ratepayers they are paying for all of the costs of regulation incurred by the utilities, the intervenors and the OEB.

Frequent Intervenor Filings

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

The OEB needs to first define what is a frequent intervenor. Then the OEB should ask itself whether it SHOULD continue with the annual frequent intervenor filings that it currently requires. What value does it provide to the regulatory process and, in particular, to the OEB, to intervenors and to utilities?

If the OEB can answer these questions and determines that these annual filings provide value, then it should clearly indicate to intervenors what information should be provided so that intervenors can see the value provided by their information.

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?

The OEB's Rules or Practice Direction should be amended to reflect a requirement for an estimate of the cost for expert evidence to be provided to the proceeding, along with an explanation of any benefits that this evidence may bring to the proceeding. This would be

reflective of the OEB's current practice.

In many cases, expert evidence is provided in reply to expert evidence filed by the utility, which is also to be unbiased and independent. In such cases, the OEB should require the utility to advise parties of the total budgeted cost for its expert evidence and the OEB should use that as a guide/cap on the cost of expert evidence from either Board Staff or intervenors. This would ensure a more even playing field than currently exists where intervenors are constrained by the hourly rates payable for their consultants while utilities are free from any such constraint.

LPMA supports the development of a standard approach to any material cost overrun for expert evidence from both intervenors and the utility.

For the utility, the OEB should require that any amounts included in regulatory costs to be recovered from ratepayers should reflect the same rates payable to consultants retained by intervenors. This would be an incentive for the utilities to keep these costs low if they can only recover a portion of the costs if they pay their experts a higher rate then allowed for intervenor experts.

For intervenors (and Board Staff), potential material (which would need to be defined) cost overruns should be identified to the OEB prior to those incremental costs being incurred. The Commissioners should then provide timely guidance to the intervenor and their expert on whether or not those incremental costs should be incurred.

Active Adjudication

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

Absolutely!

Oral Hearings:

LPMA believes that oral hearings should be the venue to ask witnesses clear and concise questions on the evidence that has been filed through the process to date (including original evidence, update evidence, interrogatory responses, technical conference responses and transcripts, presentation material, etc.). It is the opportunity to further probe the material and positions of the utility.

It is the observation of this consultant that there is far less actual cross-examination taking place at oral hearings than in the past. The comments that follow in the remainder of this section do not apply to most of the consultants and lawyers that represent intervenors.

Some consultants and lawyers, however, spend a lot of time on immaterial matters where the answers, whether they be oral or by way of undertaking, do not really matter. They also spend a lot of time not asking questions, but rather trying to telegraph their point, if there is one, to the Commissioners. Submissions should be made in argument, not in cross-examination.

This is a significant waste of time, energy and money for everyone involved both in and

out of the hearing room or the Zoom call. A cross-examination that takes 2 hours but should have taken 1, results in an additional hour of costs for every consultant and lawyer in the room and takes away time that would be more productive not only for all the consultants and lawyers, but also for utility staff, Board staff and the Commissioners.

This waste of time, however, is not limited to the intervenor side of the room. Utility witnesses can be equally wasteful of time. Again, this does not apply to all witnesses or to all utilities. Most utilities and most witnesses are very helpful and try their best to answer the questions asked.

However, some witnesses respond as if they were politicians. In other words, they focus on the message they want the Commissioners to buy into and often avoid answering the actual question asked of them, or forgetting what it was. This results in the questioner having to repeat their question, sometimes several times, before an adequate answer is provided.

LPMA believes that the solution to this problem is active adjudication on behalf of the Commissioners. Commissioners should be less hesitant to jump in to ask those doing the cross-examination to get to their point and to move on, when necessary.

Another way to help achieve this goal is to keep all questioners to their allotted time. This should focus parties on their material issues and key points.

For this to be fair to the intervenors and for it to work, however, the Commissioners should expect the witnesses to provide clear and concise responses and to only elaborate where necessary to explain a response. The "utility story" does not have to be repeated over and over.

Technical Conferences:

Commissioners should attend technical conferences. LPMA believes that this would reduce the time, energy and money associated with refusals to answer questions.

In the absence of Commissioners at a technical conference, a lot of time is spent debating whether or not a question should be responded to or not. When a utility refuses to answer, one of two things happen. First, a motion is filed to ask the Board to compel the utility to provide a response. This can eat up a lot of time both to file the motion and for the Board to hear it. The second thing that can happen is that no motion is filed, which means that the time debating the merits of the question at the technical conference, were apparently not worth the time and effort to get responses.

If the Commissioners were present, there would likely be less points of contention between the utility and intervenors. The utility would probably answer a few more of the questions and the intervenors would probably pursue a few less of the unanswered questions. Where they still disagree, the Commissioners can ask both parties for a succinct reason why the question should or should not be responded to and provide a timely response. This would avoid some, but maybe not all, motions.

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?

With respect to the scope of a hearing, the OEB should provide parties with the opportunity to provide comments on what should be in scope and what should be out of scope, with reasons, after providing a reasonable amount of time for parties to review an application and the associated evidence.

LPMA believes that the OEB should then provide a clear and concise description of what is included in the hearing and what is explicitly excluded. Intervenors should then be expected to follow the OEB guidance and not spend any time on matters that have been determined to be out of scope. If they do, the OEB should take this into consideration when determining the quantum of costs awarded to an intervenor.

In most cases, the materiality of issues is not clear or known in the early stages of a proceeding. The determination of material issues should only be determined after discovery through the interrogatory process, a technical conference and the settlement conference.

In some instances, a material issue may not be discovered until the settlement conference. This was the case in the recently completed EB-2021-0148 Incremental Capital Module Funding Request (Phase 2) of Enbridge Gas Inc. ("Enbridge"). In the April 12, 2022 Decision and Order, the OEB found that Enbridge did not adequately identify that a project for which it was seeking ICM funding generated additional revenue (pages 21-24). In particular, the OEB stated at page 22 of the Decision that:

> The ACM Report[64] lists the evidence the OEB expects a distributor to provide support the need for ICM funding, including:
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> Evidence that the incremental revenue requested will not be recovered through other means (e.g., it is not, in full or in significant part, included in base rates or being funded by the expansion of service to include new customers and other load growth).[65]
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> In the EB-2020-0181 ICM proceeding, incremental revenue was an issue, along with the timing of the delivery of evidence related to incremental revenue. The OEB sought to clarify its expectations in the decision:
>
> The OEB notes that Enbridge Gas's application did not indicate that the project was forecast to generate $5.8 million of incremental revenue. This evidence was adduced through intervenor interrogatories. Enbridge Gas's application was lacking in this regard. In the interest of efficiency, forecast incremental revenues should be included in all ICM funding requests.[66]
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> In this proceeding, it appears the same sequence of events has occurred again. Had it not been for the unanticipated settlement conference, Enbridge Gas's application and interrogatory responses indicated that there were no incremental revenues associated with the Kirkland Lake project.
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> 64 EB-2014-0219, Report of the Board, New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014.

[65] EB-2014-0219, Report of the Board New Policy Options for the Funding of Capital Investments: The Advanced Capital Module, September 18, 2014, p. 25.

[66] EB-2021-0181 Decision and Order, p. 16.

The best place for the OEB to determine the materiality of issues is following a settlement conference and before any oral hearing. At that point the OEB can determine that material issues that have not been settled should proceeding to the oral hearing with the other unsettled issues going directly to argument. This should help with the efficiency of oral hearings. LPMA notes that the OEB has used this approach in the past and it has worked well.

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?

LPMA believes that to be fair and reasonable to all customers across the province, all policies should be addressed through generic hearings rather than through individual applications. Not all intervenors participate in all proceedings where policies may be developed or altered. In fact, many intervenors may not know that a particular application has a potential policy impact that may affect customers of other utilities.

This would solve the problem identified by LPMA in the response to question 4 above. In the example given, LPMA (and others) would not need to intervene in a Hydro Ottawa proceeding if the policy issue was removed from that proceeding and moved to a generic proceeding. Not only would this ensure that any party (whether ratepayer group, environment group, utility, etc.) would be aware of and be able to participate in the generic proceeding if they so deemed it necessary, but it would avoid the same policy issue be raised in subsequent individual applications. It would also remove the burden of the utility that first proposes the policy or change in policy to get OEB approval. In short, generic proceedings dealing with policy increase regulatory efficiency.

In terms of specific issues that should be dealt with through generic hearings, LPMA believes that the OEB needs to take another look at ICM/ACM applications and at Custom IR applications.

With respect to ICM applications, the OEB noted the sizable forecast increases in year-over-year capital budgets and in-service additions compared to the asset management plan filed in the previous year's ICM proceeding in the recently concluded Enbridge EB-2021-0148 Decision (pages 25-26):

> The OEB notes the concerns of intervenors representing various consumer groups regarding the ICM policy, its evolution and continued application. While the OEB agrees with Enbridge Gas that this proceeding is not the appropriate place to consider or address changes to the ICM policy, one effect of expanding capital budgets during an IRM period is to reduce the materiality of individual projects,

which can act as a control in relation to those concerns.

LPMA believes that the ICM policy needs to be reviewed on a generic basis as it appears that the current ICM policy is being applied in a manner that is unfair and unreasonable to consumers by some utilities, notably those under a rebasing deferral period for mergers and acquisitions.

With respect to Custom IR applications, LPMA believes that the OEB should review these types of applications to determine if they are in the public interest. In addition to the heavy regulatory burden associated with this type of application and the quasi multi-year cost of service approach that this type of application has morphed into, it is no longer clear that there is any regulatory efficiency or consumer benefit associated with them.

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

LPMA is not in position to provide comments on this question because the answer likely depends on the type of generic proceeding. If the proceeding dealt with a generic issue that had small impacts on ratepayers, the answer would be different than if a generic issue had a large impact on ratepayers. Similarly, if the generic proceeding had an impact on a small number of utilities, the answer may be different than if the proceeding had an impact on a large number of utilities.

The only response that LPMA can provide to this question is that any changes that the OEB should or could consider with respect to generic proceedings may depend on the generic proceeding itself. Some may attract the attention of multiple intervenor groups and utilities. Others may attract the attention of only certain intervenor groups and utilities.

Yours very truly,

Randy Aiken

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Date: 2022.04.29 08:43:12 -04'00'

Randy Aiken
Aiken & Associates

APPENDIX A

	($000)	Total Cost	Total Number of	Average Cost Award	# of Applications	Average Number of		Predicted Cost	Cost Award
	Year	Awards	Applications	per Application	> $500M	Intervenors		Awards	Variance
	(a)	(b)	(c)	(d)=(b)/(c)	(e)	(f)		(g)	(h)=(d)-(g)
	2013	1,270.50	22	57.75	0	3		73.51	-15.76
	2014	522.50	11	47.50	0	3		73.51	-26.01
	2015	2,617.90	11	237.99	2	4		248.21	-10.22
	2016	964.40	13	74.18	0	4		84.49	-10.30
	2017	1,050.60	10	105.06	0	3		73.51	31.55
	2018	1,471.40	9	163.49	1	3		155.38	8.11
	2019	254.40	4	63.60	0	2		62.54	1.06
	2020	1,072.10	6	178.68	1	4		166.35	12.33
	2021	937.40	10	93.74	0	4		84.49	9.25

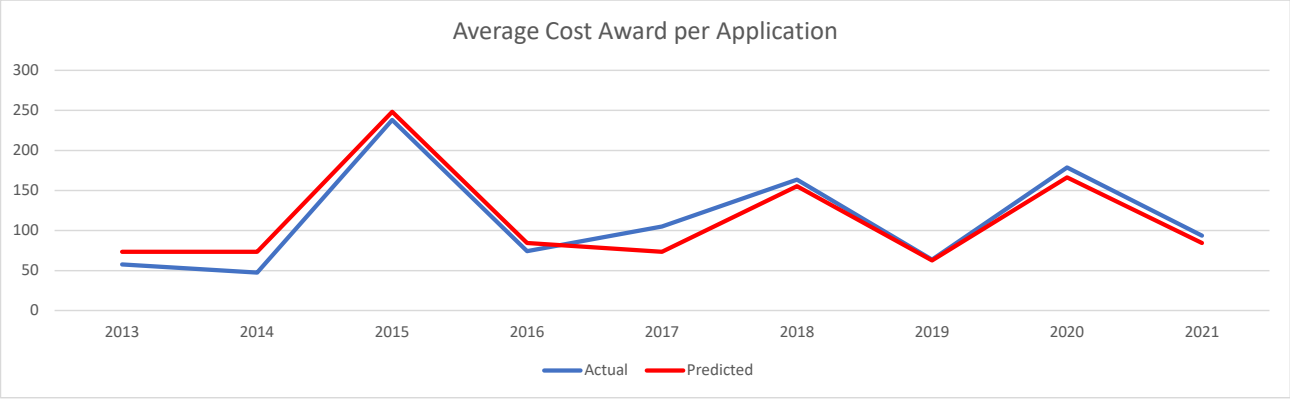
SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.964
R Square	0.929
Adjusted R Square	0.905
Standard Error	20.148
Observations	9

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	2	31,771.512	15,885.756	39.133	0.00036
Residual	6	2,435.666	405.944		
Total	8	34,207.178			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 80.0%*	*Upper 80.0%*
Intercept	40.593	35.712	1.137	0.299	-46.792	127.978	-10.824	92.010
Applications > $500M	81.863	10.727	7.631	0.000	55.615	108.111	66.418	97.307
Number of Intervenors	10.974	11.021	0.996	0.358	-15.994	37.941	-4.894	26.841



APPENDIX B

	($000)	Total	Total	Average	# of	Average		Predicted	Cost
		Cost	Number of	Cost Award	Applications	Number of		Cost Award	Award
	Year	Awards	Applications	per Intervenor	> $500M	Intervenors		per Intervenor	Variance
	(a)	(b)	(c)	(d)=(b)/((c) x (f))	(e)	(f)		(g)	(h)=(d)-(g)
	2013	1,270.50	22	19.25	0	3		25.73	-6.48
	2014	522.50	11	15.83	0	3		25.73	-9.90
	2015	2,617.90	11	59.50	2	4		64.14	-4.65
	2016	964.40	13	18.55	0	4		19.88	-1.34
	2017	1,050.60	10	35.02	0	3		25.73	9.29
	2018	1,471.40	9	54.50	1	3		47.86	6.64
	2019	254.40	4	31.80	0	2		31.58	0.22
	2020	1,072.10	6	44.67	1	4		42.01	2.66
	2021	937.40	10	23.44	0	4		19.88	3.55

SUMMARY OUTPUT

Regression Statistics	
Multiple R	0.922
R Square	0.850
Adjusted R Square	0.800
Standard Error	7.227
Observations	9

ANOVA

	df	*SS*	*MS*	*F*	*Significance F*
Regression	2	1,773.312	886.656	16.976	0.00339
Residual	6	313.375	52.229		
Total	8	2,086.687			

	Coefficients	*Standard Error*	*t Stat*	*P-value*	*Lower 95%*	*Upper 95%*	*Lower 80.0%*	*Upper 80.0%*
Intercept	43.268	12.810	3.378	0.015	11.923	74.612	24.825	61.711
Applications > $500M	22.130	3.848	5.752	0.001	12.715	31.546	16.591	27.670
Number of Intervenors	-5.846	3.953	-1.479	0.190	-15.519	3.827	-11.538	-0.154