

**LIEN'S COMMENTS ON OEB'S
FRAMEWORK FOR REVIEW OF INTERVENOR PROCESSES AND COST AWARDS
EB-2022-0011**

The OEB seeks comments and feedback from stakeholders on the OEB's Framework for Review of Intervenor Processes and Cost Awards (the "Framework"), as well as on potential changes to the Framework. The OEB includes several questions throughout the body of the Framework and in Appendix B of the Framework.

LIEN provides the following comments in response.

5.0 APPROACH

Below are LIEN's comments on the OEB's identified concerns set out under section 5.2 of the Framework.

5.2 OEB'S IDENTIFIED CONCERNS

SHOULD THE OEB PROVIDE COST ELIGIBILITY FOR MULTIPLE INTERVENORS REPRESENTING THE SAME OR SIMILAR INTERESTS?

The OEB should provide cost eligibility for multiple intervenors that appear to represent the same or similar interests. As has been demonstrated over the years before the OEB, different intervenors protect individual interests and may make trade-offs on issues very differently. As such, different intervenors present differing views and unique arguments, which enhance the record on which the OEB adjudicates. For example, one intervenor may prioritize keeping rates down, while another may concede a higher rate impact for the customer group, if this contributes to other goals such as economic development or environmental protection.

There is already a good deal of voluntary collaboration among groups that may have overlapping and/or common interests to minimize unnecessary duplication by specializing in particular matters. The OEB could encourage this collaboration further by allowing more time between the Issues List and formulation of interrogatories and allow time prudently spent to be recovered in the cost awards (i.e., for actions taken by intervenors to collaborate while providing separate interventions, as appropriate).

HOW CAN THE OEB ENSURE THAT THE TOTAL COST AWARDS GRANTED ARE COMMENSURATE WITH THE NATURE OF A PROCEEDING?

The OEB can take several steps to help ensure that total cost awards are commensurate with the nature of proceeding such as:

- ◆ requiring requests to file expert evidence to include the expected cost of the evidence. This is good practice, as long as the estimate is viewed as such and can be refined based on supported rationale at the time of the cost award request
- ◆ requiring submissions from all intervenors, setting out ballpark cost estimates of expected intervention after the Issues List is determined, and

- ♦ continuing to approve an Issues List to scope the proceeding.

Having an approved Issues List will also help to ensure that immaterial issues are not explored in OEB proceedings, along with avoiding cost awards that relate to immaterial issues.

SHOULD THE OEB CONSIDER USING MORE GENERIC PROCEEDINGS OR POLICY CONSULTATIONS WHERE A SIMILAR ISSUE ARISES IN MULTIPLE PROCEEDINGS?

Yes, the OEB should consider using more generic proceedings or policy consultations. Generic proceedings should be explored not only when similar issues arises or are likely to arise in multiple proceedings but also to ensure that policy matters receive comprehensive and thorough testing. This will help facilitate more informed decisions on generic matters. Generic proceedings would cover, for example, matters such as establishing a natural gas IRP framework and cost-effectiveness methodology from the application proceeding (as the OEB decided to do when separating Enbridge's Dawn Parkway Leave to Construct application from the general IRP framework proceeding).

HAVING ONE INTERVENOR TAKE THE LEAD ON A PARTICULAR ISSUE OR ISSUES IN A PROCEEDING MAY REDUCE DUPLICATION, BUT ARE THERE WAYS TO BETTER ASSIST THE OEB IN UNDERSTANDING WHETHER THIS HAS OCCURRED AND THE IMPACT ON COST CLAIMS?

LIEN supports the voluntary leadership of one intervenor taking the lead on particular issues with the consent of other interested intervenors. LIEN opposes the OEB requiring such leadership as LIEN chooses intentionally when it intervenes to provide a focused perspective on low-income matters. Voluntary leadership on particular issues has been happening in OEB proceedings for years and the OEB should continue to encourage this practice.

For better understanding cost claims, the OEB can require intervenors that have voluntarily collaborated to indicate and describe how that collaboration has led to a more focused and cost-effective intervention. The OEB should also allow intervenors to recover the costs of initially fostering that collaboration as well as the collaboration itself. In addition, where collaboration efforts have been made, but did not result in mutual agreement, the OEB should still permit cost recovery if parties engaged in best efforts to collaborate.

HOW CAN THE OEB SUPPORT REPRESENTATION FROM INDIGENOUS PEOPLES AND MARGINALIZED GROUPS IN OEB HEARINGS?

LIEN believes that the Framework should include objectives to promote equity and the representation of Indigenous peoples and marginalized groups, including low-income people, in OEB proceedings. To this end, LIEN recommends the following.

Indigenous Peoples Working Group

LIEN recommends that the OEB establish an Indigenous peoples working group to collaborate on how to achieve that representation.

Low-income Working Group

Similarly, LIEN recommends that the OEB set up a low-income working group to address relevant matters. Because of Covid-19, inflation, and other economic matters, the low-income community in Ontario is growing. Creative solutions are needed to further protect low-income ratepayers in matters under the OEB's purview.

New OEB Working Group on Customer Engagement

LIEN understands that the OEB has formed a new working group to specifically consider matters such as customer engagement and consider matters that affect low-income consumer engagement. Over the years, LIEN has advocated before the OEB on a broad range of customer care matters affecting low-income consumers, including customer engagement. LIEN requests that groups not directly represented in this working group have the opportunity to engage with this group and provide ongoing feedback.

Review Expectations for Customer Engagement and distribution/utility system plans in applications

LIEN strongly supports the review of expectations for this type of customer engagement. Utility system plans and rate proceedings would benefit from increased attention to customer care matters. As well, proceedings would benefit from more specific guidelines on the need for and role of customer consultation in the development, and implementation of utility system plans and rates. This should include, but not be limited to, providing guidance on identifying customer needs and preferences, and how they should be documented and integrated into the planning and implementation of plans and rates.

5.3 CURRENT PRACTICES

In addition to identified concerns, the OEB considers it important to identify aspects of the intervenor processes that have been working well for the OEB in making its determinations. The OEB is considering further enhancements for these areas as well.

LIEN supports the investigation of further enhancements as described in Section 6.3 of the Framework: Are there other initiatives that the OEB should consider to better clarify application expectations and result in more efficient proceedings?

LIEN recommends that in addition to identifying possible errors prior to the approval of interventions, the OEB should

- ◆ verify that the application is complete as determined by coverage and consistency with any OEB filing requirements and guidelines, and
- ◆ provide supportive rationale for any deviations.

This has been an effective and standard practice in the review of environmental assessment applications under the former *Canadian Environmental Assessment Act* (now *Impact Assessment Act*) and Ontario's *Environmental Assessment Act*. This completeness screening could be discussed in the pre- and post-filing meetings.

LIEN supports the OEB offering guidance on applications by holding pre- and post-application meetings with applicants as well as orientation sessions. In addition, the OEB should consider providing pre-submission guidelines to identify the opportunity for and the role of such assistance by the OEB.

7.0 RULES OF PRACTICE AND PROCEDURE, PRACTICE DIRECTION ON COST AWARDS, AND GUIDANCE DOCUMENTS

7.1 INTERVENOR STATUS: SUBSTANTIAL INTEREST

HOW SHOULD THE OEB DEFINE WHAT CONSTITUTES “SUBSTANTIAL INTEREST”?

Section 7.1 of the Framework provides a list of criteria to demonstrate that a party has “substantial interest” in a proceeding. LIEN supports this list.

Potential changes to Rate Applications and Leave to Construct Applications

Regarding the change proposed to OEB’s Rules regarding Rate Applications, LIEN is concerned that the OEB seeks to define “discrete customer groups of a utility” as those with a substantial interest in a proceeding.

LIEN represents low-income consumers as informed by its membership, primarily composed of legal aid clinics and social service agencies among others, across Ontario.

As a group of consumers receiving specific and defined government services based on their income eligibility, determined by certain explicit criteria, LIEN considers this group of consumers to be a discrete customer group within the context of the Framework.

Moreover, there is a rate subsidy provided to income-eligible electricity ratepayers in Ontario, further making this group a distinct customer group. LIEN led the initiative to bring about such a rate subsidy on behalf of low-income electricity consumers in Ontario.

LIEN would have serious concerns should OEB apply to the definition the requirement to have “substantial interest”, as this could exclude LIEN from participating in rate applications. LIEN would also have serious concerns should OEB exclude LIEN from Leave to Construct applications, even if low-income consumers or their neighbourhoods are impacted by those applications.

LIEN supports that “substantial interest” should be defined as “representing a customer group”. This definition would allow LIEN to be included as a participant in rate applications.

PILOT APPROACHES AND STRATEGIES FOR LIMITED-SCOPE INTERVENORS

It is unclear how the OEB proposes to define “limited-scope intervenors.” LIEN is of the view that this definition should not apply to intervenors that represent discrete customer groups. LIEN has a long track record of being very judicious in its interventions before the OEB. LIEN focuses its issues, interrogatories, and argument on low-income consumer matters related to rates, customer care, certain environmental matters such as cap and trade, as well as DSM. Such focused interventions by LIEN should not be treated within the “limited-scope” definition but

should be recognized as being an efficient and cost-effective approach of intervention before the OEB.

LIEN is wary of approaches with pre-defining limits on cost awards as groups like LIEN could not participate in OEB proceedings without costs awards. Setting pre-defined limits on hours such as what the OEB has done for this proceeding (but with limits greater than 8-10 hours for most proceedings even if limited in scope to ensure adequate time to provide more comprehensive inputs), which is a specific and clearly framed consultation, is an appropriate use of setting pre-defined limits. LIEN is not supportive of such an approach for more complex policy or application proceedings, as a “limited scope intervenor” may have a broad range of germane matters to address. Rather than setting pre-defined limits, the OEB could consider, after the Issues List is determined, requiring the “limited-scope intervenor” to provide upfront more detail on the nature of its proposed intervention and a cost estimate to deliver it. After, the OEB may consider providing guidance to the “limited scope intervenor” on that description and estimate. Ultimately, the OEB determines the cost award at the end of the proceeding based on the contribution of that intervention.

LIEN is opposed to strategies that require a “limited scope” or a requirement that any other intervenors that have or may have scope, which overlaps with another party, to work together (e.g., combined intervention) with cost awards set commensurately. Even if two or more intervenors appear to have the same or similar interests, their views on how to address those interests may not be the same. Forcing collaboration, where there are no or limited points of agreement, may be time-consuming and counterproductive and may not provide the most informed basis on which to make a decision. Instead of forcing collaboration, the OEB should provide time and the allowance of cost awards for eligible intervenors to explore areas of potential collaboration for like interests. The OEB should allow separate interventions for areas of disagreement.

7.1 USE OF EXPERTS

LIEN supports the OEB’s proposal to develop a standard approach to a material cost overrun for expert evidence in advance of the cost award process. LIEN also supports the OEB establishing a process to qualify experts earlier in a proceeding (i.e., prior to interrogatories on the evidence). LIEN agrees that qualifying experts early in a proceeding will streamline the proceeding and limit the number of interrogatories about the relevance, necessity and qualifications of an expert.

LIEN appreciates this opportunity to comment on the Framework.