

Ontario Energy Board

Framework for Review of Intervenor Processes and Cost Awards

EB-2022-0011

Submission of the Quinte Manufacturers Association

April 29, 2022
Belleville, Ontario

1.0 INTRODUCTION

In a letter dated March 31, 2022, Ontario Energy Board (“OEB” or “Board”) Chief Executive Officer, Suzanna Zagar and Chief Commissioner, Lynne Anderson invited regulated entities and interested parties to provide comments and feedback on the OEB’s *Framework for Review of Intervenor Processes and Cost Awards* report (“Report”) dated March 2022. The Quinte Manufacturers Association (“QMA” or “Association”) has reviewed the Report and is pleased to submit its comments herein to assist the Board in its efforts to become a top quartile regulator.

2.0 CONTEXT

As a diversified collective of manufacturers and processors located in the greater Bay of Quinte region which includes the cities of Belleville and Quinte West and the Municipality of Brighton. QMA members create more than 11,000 jobs and contribute approximately 6.7 billion dollars of the 12.3 billion dollars of economic output the Quinte region generates for Ontario.¹

The QMA is an unfunded industry collaborative that represents the interests of its members. It provides a forum for members to discuss issues and matters of common concern. The QMA is led by a volunteer steering committee of corporate executives drawn from local manufacturers.

Energy costs related to the supply, service and distribution of natural gas and electricity for manufacturing and processing purposes are of specific and growing concern to QMA members because those costs have a direct and potentially material impact on the cost of production, plant competitiveness and local employment. Although the QMA is a relatively new intervenor in Ontario Energy Board proceedings, the Association limits its participation to those proceedings that may impact and have direct consequences for manufacturers.

The Association offers the following comments and feedback on the *Framework* report from the manufacturers perspective which we hope will assist the Board to enhance the efficiency and effectiveness of its adjudicative processes.

3.0 GENERAL OBSERVATIONS

Association members recognize the costs associated with regulating the natural gas and electricity sector and the important role the OEB plays in determining intervenor eligibility and cost awards. This is a challenge for the QMA and its members where one member’s interest in a certain issue or issues in an application may not always be a concern for other members. The QMA is also concerned with regulatory costs in general and carefully determines if it will request intervenor status in a proceeding or not.

The QMA’s focus in OEB proceedings tends to be localized to the greater Bay of Quinte Region and the manufacturers and processors that own and operate facilities that consume electricity and natural gas for manufacturing and/or processing purposes. However, and from time to time, QMA member interest in a particular application may include energy issues that cover a wider geographical area or particular point of view raised by the applicant or intervenor that may not have been previously considered by Association members. The QMA has applied for intervenor status in certain proceedings where it was initially thought

¹ Source: Quinte Economic Development Commission

an intervention on behalf of members was necessary, but upon further review and consultation, was ultimately found not to be necessary because concerns or issues were addressed satisfactorily and the OEB and parties advised accordingly.

The Association undertakes a preliminary review those applications and OEB initiated proceedings that may have impacts on QMA members. This type of high-level review is used to determine whether or not the Association applies for intervenor status on a particular matter. In all cases, the Association strives to keep its costs of intervention as low as possible in representing its interests. The wise use of rate-payer dollars should always be a strong consideration in OEB proceedings.

4.0 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?*

As an intervenor with limited resources to review large applications, the QMA would strongly support a form of pre-submission consultation (“PSC”) with applicants and potential intervenors before a formal application is made to the OEB. The concept of PSC in the matter of rates and leave to construct applications would require further development beyond what is included in the QMA response to the consultation questions. Nevertheless, The QMA believes there is value in PSC. This would allow intervenors to better pinpoint areas of an application that are of particular concern and help reduce the cost to review very large and sometimes unwieldy applications. The PSC concept is described further in question 13 below.

Clarifying Application Expectations

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

The Board’s “Issues List” that is developed for a proceeding is very helpful and the QMA appreciates the opportunity to participate in discussion around the development of a final Issues List. In addition, having OEB staff identify potential errors in an application before the public notice process begins is also very helpful.

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?*

In answer to questions 3 – 6 above, the QMA considers matters of “substantial interest” as those that are of either specific and/or general concern to its members individually and collectively in an application. An energy or regulatory matter that is of significant importance to one manufacturer may not be to another. For example, if one manufacturer in an industrial park has a direct and “substantial interest” in how its business may be impacted by a particular leave to construct application, other manufacturers may not be as concerned. The QMA, on behalf of the impacted manufacturer and in consideration of other members will determine whether it is reasonable and appropriate to apply for intervenor status in that case. The QMA believes that the boundaries of what defines “substantial interest” need to remain flexible and that it is up to the intervenor to make its case to the OEB as to its “substantial interest” in an application.

Cost Awards

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

The QMA is of the view that it is important for the OEB to continue to remind intervenors to take advantage of collaboration where it is reasonable and appropriate to do so. When and where “similar views” on issues and interests appear to exist, it is important to recognize that viewpoints and outlooks of individual intervenors may be quite different and it becomes the responsibility of the intervenors to consult with each other to help ensure there is no unnecessary duplication of “similar views”. This does not mean to suggest that intervenors can not be supportive of “similar views”.

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

As discussed above, the QMA represents the interests of its diverse membership. There should be no bias as to whether for-profit or not-for-profit entities are eligible for cost awards in OEB proceedings. The QMA believes the work of the OEB is to be in the best interests of all Ontario energy ratepayers. The OEB has established clear thresholds to test cost award eligibility and ensure intervenor contributions are valid and helpful to the Board to justify a cost award. The QMA supports the OEB’s tests. The QMA is an unfunded collaborative of manufacturers in a small geographic area of Ontario. The energy interest of QMA members varies significantly from member to member depending how energy is used in manufacturing processes and their ability to actively fund and participate in OEB proceedings would vary accordingly. The Associations members have determined that the QMA is in the best position to represent their interests in proceedings before the OEB.

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

Members of the QMA have been clear to-date that the Association is the appropriate way of representing their interests in matters before the OEB. Members are free to pursue direct representation on their own, if they so choose.

Frequent Intervenor Filings

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

The QMA has no comments on this question at this time.

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 QMA has no comments on this question at this time.

Active Adjudication

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

The QMA appreciates the role that the Commissioners take in adjudicating the hearing process. The Association welcomes and supports the active engagement of Commissioners to help ensure the hearing process moves along smoothly and efficiently. The QMA understands that managing the hearing process can be challenging, but believes the OEB manages this process very well and is transparent in what it does and how it makes its determinations.

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.*

The QMA believes it would be very helpful to see a form of pre-submission consultation with applicants to better inform and focus intervenor areas of interest and reduce the amount of pre-filed evidence review time that is incurred in large and complex cases. The QMA recognizes that this process would have to be fully developed to fit the OEB's regulatory process. Nevertheless, a properly designed pre-submission consultation would encourage a more complete and robust "front-end" engagement with an applicant before a formal filing is made. PSC, in the QMA's view is not the traditional half-day overview of an application that applicants often provide intervenors before filing, but a true consultation exercise that consists of interactive dialogue and exploration of issues as the application is being prepared.

PSC, alternatively called "pre-consultation" has a long history of effectiveness in other regulatory proceedings at the municipal, provincial and federal levels. It offers an opportunity for the applicant and intervenors and others to share information and provide input and get feedback on a proposed application early in the application development process. This is the opportunity to collaborate, to discuss, to resolve issues, to compromise where warranted with parties, and to refine an appropriate issues list. The QMA respects that the applicant has to be confident in the viability of its application and that intervenors, have to be confident that ratepayer interests are protected. The QMA believes early discussion and openness can assist all parties to benefit from savings in time, money and resources.

Generic Proceedings

14. *Are there existing issues that do not 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 should consider with respect to generic proceedings?*

In answer to questions 14 and 15 above, the QMA has limited experience in participating in generic hearings and has no further comments to add at this time.