



**CANADIAN FEDERATION
OF INDEPENDENT BUSINESS.**

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September 27, 2013

COPY FILED VIA RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street,
27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: Review of Framework Governing the Participation of Intervenors in
Board Proceedings – Board File No. EB-2013-0301
Comments Related to First Phase – Review of the Board’s Current Approach

The Canadian Federation of Independent Business (“CFIB”) appreciates the opportunity to participate in the above-captioned consultation, and to provide comments in response to the Phase I questions set out in the Board’s letter of August 22, 2013.

CFIB and Its Members

Founded in 1971, CFIB is a not-for-profit advocacy group, representing the interests of more than 109,000 owners of small and medium-sized businesses, distributed across all industry sectors and all regions of Canada. CFIB aims at ensuring the economic development of its members - whether they are one person home-based businesses or companies employing hundreds of people for the best interest of their communities.

Approximately 42,000 of the 109,000 CFIB members are located in Ontario. As such, CFIB’s members represent a large portion of the commercial electricity and natural gas consumers in Ontario. CFIB’s members are located throughout Ontario, and are therefore customers (either directly or as tenants of bulk metered buildings) of many of the electricity and natural gas distributors regulated by the Board.

CFIB’s members mirror and reflect the regional and economic diversity of Ontario, as they include many commercial sectors such as agriculture, natural resources, construction, manufacturing, wholesale, retail, transportation, arts and information, finance, insurance, real estate and leasing, professional services, enterprises and administrative management, social services, hospitality, personal, miscellaneous services and others. As diversified commercial electricity and natural gas consumers, CFIB’s members are concerned with all matters pertaining to the supply and price of these vital energy sources.

Recently CFIB has participated through legal counsel and experts in stakeholder consultations on the Board's Renewed Regulatory Framework for Electricity and Encouraging Electricity Distributor Efficiency. CFIB hopes to continue to take a strategic, targeted approach to its future participation before the Board, becoming involved to where it can offer the unique perspective of small and medium-size businesses in proceedings with wide implications for its members.

CFIB is not aware of any other active intervenor group in Ontario whose focus is to represent the issues of electricity and gas consumers who are small and medium-size businesses. As a result, we feel that CFIB has an important contribution to make in ensuring that the full range of stakeholders is represented before the Board.

CFIB will provide specific answers to the questions posed by the Board as an outline for participant comments.

Questions Specifically Posed by the Board for Comment

Intervenor Status

1. What factors should the Board consider in determining whether a person seeking intervenor status has a "substantial interest" in a particular proceeding before the Board? For instance, should the Board require a person seeking intervenor status to demonstrate consultation or engagement with a constituency directly affected by the application?

"Substantial interest" generally means an interest that is proprietary or pecuniary – i.e. that affects ownership of assets, income, or costs to the party. The obvious persons or organizations with substantial interest in regulatory matters are land owners affected by applications to build facilities on or near to their property, and the customers, suppliers and business competitors of the applicant, but it has also been extended to include persons who might be affected for environmental, health or quality of life reasons.

As we understand it, the question is whether, given that the individual members of a constituency would qualify for intervenor status, a person purporting to represent the constituency should have to demonstrate that he/she has knowledge of the views and interests of the constituency or has been authorized by the members of the constituency to represent them.

CFIB has specific and identifiable members, who join CFIB with the express understanding that CFIB will advocate on their behalf on relevant issues of policy that affect their business success. CFIB gathers information and opinion from its members through surveys on a regular basis and reports to the members on its activities on their behalf. Member impacts of energy policy and utility rate increases have been addressed in such surveys and reports. We can therefore assure the Board that CFIB engages with and consults members on these issues. We would support a policy that would require engagement and consultation by intervenors on behalf of a constituency, subject to the understanding that such consultations would be at a high level.

2. What conditions might the Board appropriately impose when granting intervenor status to a party? For instance, should the Board also require an intervenor to demonstrate how the intervening group or association governs the participation by its legal counsel and other representatives in the application?

In order to participate meaningfully in a process where the standard of expertise is set by regulated applicants, an intervenor needs the advice of legal counsel and other representatives such as consultants specialized in the regulated energy sector. The intervenor places trust in these experts and is guided by their advice. In CFIB's case, most of the work associated with interventions must be delegated to the experts, not only because CFIB staff is not specialized in regulatory work, but also because the staff have an on-going and demanding work load.

Having engaged legal counsel and a consulting firm to work on our behalf, CFIB reviews and approves the proposals they submit as to the initiatives we will participate in, and the documents that will be filed on our behalf. We review the results of member surveys on energy sector issues with our counsel and consultants to ensure they understand what issues are most important to our members. Then, on a day to day basis, we expect that our legal counsel and consultants will work in our interest and will request direction from us when important matters of policy arise.

CFIB believes that this type of practice represents a reasonable standard for the Board to require of any intervenor.

It is our understanding that the Board requires evidence of the qualifications of legal counsel and consultants when approving awards of costs, and CFIB supports this practice.

Cost Eligibility

1. What factors should the Board consider in determining whether a party primarily represents the direct interests of consumers (e.g. ratepayers) in relation to services that are regulated by the Board? For instance, should the Board require the party to demonstrate consultation or engagement with a class of consumers directly affected by the application?

We believe our answer to Question 1 in the previous section applies.

2. What factors should the Board consider in determining whether a party primarily represents a public interest relevant to the Board's mandate?

It is our understanding that the key issue in these two questions is that a public interest party will not necessarily have a constituency that can be defined in terms of a class of consumers, and therefore a requirement to consult or engage might not apply in the same terms. Some possible factors to consider might be:

- That the party has a published mission or vision statement focused on the relevant public interest issue; and
- That the party can provide evidence of its activities related to the relevant public interest other than activities funded by Ontario Energy Board cost awards (for example: newsletters, appearances in other forums, such as government consultations).

3. What conditions might the Board appropriately impose when determining the eligibility of a party for costs? For instance, what efforts should the Board reasonably expect a party to take to combine

its intervention with that of one or more similarly situated parties? Should the Board reasonably expect parties representing different consumer interests to combine their interventions on issues relating to revenue requirement (as opposed to cost allocation)?

CFIB supports the conditions currently in place:

- That no costs apply in respect of the work of salaried employees of the party;
- That the legal counsel and consultants have appropriate qualifications; and
- That the contribution of the intervenor to the proceeding be of value.

While CFIB respects the motivation to reduce costs that results in a suggestion to combine interventions, application proceedings before the Board are fundamentally of an adversarial nature. It is not always clear what parties are “similarly situated”, and parties that may have a common interest in one aspect of an issue may be opposed, or at least of a different view, in another aspect. For example, while all ratepayers share an interest in lower energy bills, different intervenor groups might have different views on service quality, employee compensation, and rate of return, as well as cost allocation. CFIB believes that all parties to a proceeding should be examining and considering all the issues they consider relevant to their own constituency, in order to assist the Board with a wide scope of facts and views.

We understand that a procedure change has been or will be implemented, in which Board Staff submit interrogatories in advance of other parties. This seems to us like a good approach, which will reduce the number of duplications in questions from intervenors. Applicants are generally good at recognizing duplicate questions and responding by reference or by repetition of material already prepared, to reduce their own effort, and the effort spent by other parties in reviewing the material.

In Board processes such as stakeholder policy consultations, there may be more opportunity to combine efforts, as long as the parties have an efficient way to identify potential allies and common ground. For example, in this consultation, the process involves a written response, followed by a live consultation with presentations. If parties have adequate time to review one another’s written responses before committing to making their own presentations, they would have better opportunity to work together in preparing for consultation meetings.

4. Should the Board consider different approaches to administering cost awards in adjudicative proceedings? For instance, should the Board consider adopting an approach that provides for pre-approved budgets, pre-established amounts for each hearing activity (similar to the approach for policy consultations), and pre-established amounts for disbursements?

CFIB considers the idea of pre-established budgets in adjudicative proceedings worth further study; perhaps a review of the time spent on previous proceedings would indicate whether the level of required effort for each activity is relatively consistent. Complexity of issues, number of issues, quality of material filed could vary considerably. If a pre-approved budget is adopted, we believe that there should be provision for the Board to consider changes to the allowed amounts if indicated as the proceeding takes place. Board Staff would be aware of difficulties arising in a case, and could make a recommendation supporting (or not supporting) the intervenors’ request for additional funding.

Recommended Modifications

1. Are there modifications that the Board should consider making to the Rules and the Practice Direction?

Section 3.03 of the Practice Direction makes reference to “consumers (e.g. ratepayers)”. Based on our own membership, CFIB considers that electricity and gas policies and rates have a direct impact on all consumers, whether they are directly responsible for the bill, or whether they occupy rented premises for which the utility costs are included in the rent. CFIB suggests that other language, replacing “ratepayers”, be substituted, to acknowledge the financial impact of energy costs, and therefore the “substantial interest”, of everyone who is a consumer.

Comments Related to LDC Consultation with Consumers under the RRFE

The Board’s letter of August 22, 2013 also refers to increased requirements for LDCs to consult more extensively with consumers. CFIB enthusiastically supports this initiative and looks forward to an opportunity to participate. We hope that such consultations would ensure that plans of the LDCs reflect consumers’ views of value for money—i.e. the most desired service and reliability improvements at an affordable cost. However, LDC-driven consultations leave to the discretion of the LDC the degree to which consumers’ inputs will be accepted and incorporated. In our view, such consultations cannot substitute for an opportunity to have the views of consumers and public interests submitted directly to the Board, and decided on explicitly by the Board. This is the vital role of the intervention process.

All of which is respectfully submitted,

Canadian Federation of Independent Business



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