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File 22234

September 27, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto ON M4P 1E4

Dear Ms. Walli:

**Re: EB-2013-0301 Review of Framework Governing the Participation of
Intervenors in Board Proceedings - Consultation and Stakeholder
Conference
PWU Submissions re First Phase**

Please accept the following as the submission of the Power Workers' Union ("PWU") in respect of the issues raised in the Board's letter dated August 22, 2013, as pertaining to the "First Phase" of this proceeding.

The central theme to the PWU's position regarding these issues is that the Board continue to take a liberal approach to interventions, but should exercise a much more rigorous approach to managing the conduct of intervenors in proceedings before it, and to intervenor costs. Moreover, the intervenor costs award and the quantum of any such costs should focus on the value actually provided by the intervenor to the Board, and not to any predetermined categorization of the status of the intervenor related to its constituency.

Intervenor Standing

The Board has traditionally taken a liberal approach to granting intervenor status. This approach has served the Board well. It permits a broad cross-section of interests to be brought to bear in the Board's consideration of the issues before it. The PWU notes that the intervenor evidence obtained by the Board through its broad approach to granting intervenor status would in no way be replaceable by utilities' consumer engagement or Board surveys. Subject to one qualification, described below, the PWU submits that this traditional approach be continued.

To the extent that the Board is concerned that intervenors are not being cost effective or are otherwise “wasting the Board’s time”, it is submitted that there are better ways of managing these issues, as opposed to barring proposed intervenors at the door. In particular, it is submitted that the Board has broad discretion to manage the proceedings before it. That includes determining whether hearings are written or oral, the length of hearings, the scope of the evidence that needs to be called and the scope of permitted cross examination. If an intervenor does not have a sufficient interest in an issue, the Board can limit his or her participation in that issue. If an intervenor is being repetitive, she or he can be cut off.

Moreover, costs are a powerful economic tool for promoting desired behaviours and discouraging unwanted behaviours. As described below, the PWU proposes that the Board take a much more critical view of costs to be awarded to intervenors, awarding costs justly where real assistance has been provided to the Board and permitting only partial recovery (or no recovery at all) of claimed costs for interventions which are unhelpful, or of only modest assistance.

The one limitation to the liberal approach to intervention is the need for the Board to ensure that intervenor groups legitimately represent the interest that they purport to represent. This is essentially an exercise in the Board satisfying itself as to the constitutional legitimacy of the proposed intervenor (i.e. who are the members of the organization, what is the governance structure, who has authority to give direction to the representative appearing on behalf of the organization at the Board)? This is a simple matter of transparency, but one which the Board must be mindful of on an ongoing basis.

1. Intervenor Costs

The PWU makes three submissions with respect to intervenor costs:

- a. The Board should abandon (with one exception) the concept that some intervenors are automatically “eligible” for costs, and others “ineligible” by virtue of their constituency or advocacy;
- b. The quantum (if any) of the costs to be awarded to an intervenor should be assessed after the fact, based upon the value of the contribution made by that intervenor to the Board’s understanding of the issues; and
- c. Subject to the outcome of the Second Phase of this proceeding, the primary objective of a new intervenor costs regime should not be to reduce the total regulatory costs encountered by regulated entities, but should be to enhance the effectiveness of addressing the Board’s legislated objectives.

a. Costs Eligibility

Currently, a number of regular intervenors (including the PWU) are automatically determined by the OEB to be “ineligible” for intervenor costs.¹ This is wrong. The PWU has participated responsibly at the Board for many years, and made very valuable contributions to many, many Board hearings, consultations and other initiatives. As a matter of fact the PWU is the most active proponent of protecting consumers’ interest for ongoing electricity service adequacy, reliability, and quality at reasonable prices in the Board’s forum and has provided a substantial body of expert evidence at substantial cost. As any skilled workforce would advocate maintaining the quality of the services they provide to their public so does the PWU in the case of electricity services.

The PWU submits that the eligibility of any intervenor for costs should be assessed, not on the basis of a pre-determined list of characteristics, but rather on the value of the contribution that they can bring to a particular proceeding. This is especially so in the case of policy consultations.

b. Determination of Quantum of Costs

The Board should be encouraging intervenors to provide them with valuable input. The Board should not care who it receives that input from, so long as it is valuable.² The Board should award (or not award) costs based upon its assessment of the value it has received during the course of the hearing from each intervenor. By necessity, this exercise would be performed (subject to exceptional circumstances) at the end of the proceeding. As a result, the potential for reward (or non-reward) in costs would be a powerful financial incentive for intervenors to conduct themselves in efficient, productive and “value added” fashion.

Under the current regime, an intervenor which is “costs eligible” can expect to receive 100% of its reasonably incurred costs. Under this formulation, the Board orders costs payable in respect of interventions, without regard to the value that the intervention has provided to the Board, if any. This provides little incentive for an intervenor to focus its intervention, and to otherwise conduct itself in a manner which seeks to maximize the Board’s understanding of the key issues it must deal with.

At the conclusion of a hearing, the Board is uniquely situated to understand the value of the contributions made to the various participants in the proceeding. It

¹ This has not invariably been the case. Prior to the current costs regime, the PWU was routinely found to be eligible to receive costs. Even under the current regime, the Board has found the PWU to be costs eligible in a number of proceedings (eg. EB-2007-0673).

² Note that the “value” of input is not synonymous with that input being “accepted” by the Board. It is important for the Board to understand various facets of an issue, in order to frame the optimal outcome.

may well be that, in many cases, the value bears only a modest resemblance to the costs actually incurred by a particular intervenor.

c. Primary Objective of First Phase Should not be to Reduce Overall Intervenor Costs

It is submitted that the objective of this stage of the consultation should be to create an environment where the Board obtains maximum benefit from the activities of intervenors within the context of the Board's overall management of the proceedings. The overriding objective should not be to reduce intervenor costs, over all other considerations. Based on the PWU's experience, in some policy consultations, intervenor expert consultants would not be able to provide substantive evidence within the Board's maximum allowed hours for cost awards.

The question of whether the total costs of intervenors is too high and should be reduced cannot be considered in the absence of an evaluation of the role that the Board wants and expects intervenors to play in the overall hearing or consultation process. There is no doubt that, compared to the pre-1998 era, intervenors play a relatively larger and Board staff plays a relatively smaller role in hearing and consultation processes. There are valid questions whether this balance should be reversed, or whether other institutional processes should take over aspects of the role now fulfilled by intervenors in the hearing process. To the extent that it is ultimately determined that intervenors should play a more limited role in the overall hearing process then an overall decrease in intervenor costs may well be warranted. On the other hand, however, if the Board wants intervenors (as a whole) to play the same or larger role, it is difficult to understand how we can expect this to be accomplished on a materially smaller overall budget.

The PWU understands that the role of intervenors representing consumer interest is the subject of the Second Phase of this review. Since the outcome of that process is unknown, no assumption can be made as to the magnitude of the future role of intervenors in the hearing process. As a result, it is premature to have this process driven by an overriding objective of reducing overall hearing costs for regulated parties. If that is the result of a more rational scheme governing intervenors, so be it, but that should not be the primary objective.

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

The PWU has observed that intervenors are using the same consultant to represent them in proceedings that are being held simultaneously. In many cases this results in scheduling conflicts for these individuals that then requires scheduling in a particular proceeding around these individuals' participation in other proceedings and or their absence from a proceeding. When the

proceeding that an individual skips is one in which the individual has been selected to participate in a policy working group meeting, input that would have been considered at the meeting may need to be considered at a later meeting or possibly after the Board has issued Board staff's policy recommendation. The need to consider input at the later timeline requires revisiting an issue and results in process inefficiency and increased costs for all other participants.

The PWU recommends that the Rules of Practice and Procedure specify that upon registering intervention an intervenor is required to commit to the availability of its registered representative for the duration of the proceeding. In the case of Working Group participation, the Board's notice should set forth the Board's expectation that the intervenor's representative will review all material provided, attend the meetings and provide input sought by Board staff as required.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

A handwritten signature in black ink, appearing to read 'R. Stephenson', written over a circular stamp or seal.

Richard P. Stephenson
RPS:jr

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