

**IN THE MATTER OF** the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 15, Sch. B, as amended;

**AND IN THE MATTER OF** a consultation by the Board with respect to the role of intervenors in Board Proceedings

**Building Owners and Managers Association - Greater Toronto (BOMA) Comments on the Ontario Energy Board's Review of Framework Governing the Participation of Intervenors in Board Proceedings**

BOMA welcomes the opportunity to comment on the Board's initiative to review the framework within which intervenors participate in a variety of Board proceedings.

To put BOMA's comments in perspective, it is important that the Board, its staff and other participants in this process understand the context for our comments and the strong role BOMA plays in engaging and representing its members, particularly on energy related matters. We are one of the largest and most progressive real estate organizations in North America.

BOMA has four key competencies:

1. The BOMA Voice – protecting and advancing the interests of its members on important policy issues at all levels of government and the media
2. The BOMA Building – fostering and recognizing excellence in building management and operations through programs, resources, certifications and awards
3. The BOMA Professional – competencies and training required of individuals to meet and maintain the demands of a complex and constantly changing commercial real estate industry

4. The BOMA network – a commercial real estate community where the most influential Building Owners, Property Managers, Suppliers and Industry Influencers connect, communicate, collaborate and share information.

BOMA's annual report for 2012 reported the following highlights:

- Advocated at all levels of Government providing a voice for commercial property owners in Ontario.
- Advanced the interests of our members on important policy issues such as energy pricing and supply, property taxes, transit, labour requirements and building regulations.
- Represented our members' views of the Ontario Energy Board advocating on topics such as conservation and demand management programs to reduce energy use, Ontario Power Authority Policies, demand side management and Energy Consumer Protection Act consultations.

Government has long preferred that industry interest groups address issues through a single representative voice. BOMA is proactive in working closely with Federal, Provincial and Municipal representatives to ensure that the legislative alternatives are fully explored. BOMA solicits opinions from its members, refines them into succinct and powerful position papers and presents them to government and other agencies including the OEB, the IESO and others.

BOMA is a leader in energy issues related to commercial real estate. We have an energy committee that is comprised of industry experts and sets the framework for our participation so that our voice can be heard. Our engagement in energy includes holding breakfast seminars and webinars on energy related topics such as the Global Adjustment, Energy Performance Contracting, and Utility Programs. In 2012, our members toured the IESO Control Centre.

We have also supported the Race to Reduce, a Civic Action program that represents a unique collaboration between office building landlords and tenants to encourage smart energy use. The Race to Reduce guides organizations, landlords, tenants and employees to increase awareness of their energy use, measure and monitor energy use, change the way they operate, change the equipment they use to reduce energy use and improve their energy efficiency. Every year, we host the Annual BOMA Energy and Environment Forum.

BOMA was named the recipient of the 2012 “Associations Make a Better Canada” Award by the Canadian Society of Association Executives for the successful development and execution of its BOMA Conservation and Demand Management Program. One of BOMA’s goals is to actively promote conservation and sustainability. BOMA is the first association to have delivered a CDM program directly to its members. The BOMA CDM model was simple and effective. It achieved substantial and verifiable electricity conservation totalling 50 MW.

What BOMA has learned is that no one organization, institution, business or corporation can “own its customers, its consumers and its members. According to the Board’s letter, the objective of this review is to determine whether there are ways in which the Board’s approach to intervenors might be modified in order to better achieve the Board’s statutory objectives. BOMA urges caution if any modifications do not reflect the active and engaged way in which BOMA brings its member needs and views to educate and inform its participation in Board Proceedings. Our representatives regularly meet with our energy committee and have faithfully relayed those needs and views.

## Response to Question about 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?*

BOMA is very confident that the above information demonstrates both consultation and engagement with its constituency and that that constituency has a “substantial interest” with respect to rate hearings, policy proceedings and consultative processes with respect to conservation of all forms of energy as well as most of the consultations and policy processes.

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?*

BOMA’s energy committee governs its legal counsel and other representatives in the application through a broad and mutual understanding of BOMA’s policies, business operations and objectives and through regular information exchanges with the President of the Association, and attendances at meetings of BOMA’s energy committee. Other intervenors should also be able to demonstrate their governance process. However, BOMA suggests that such governance should not be prior approval of documents and arguments.

More generally, the Board should continue to use its discretion to decide on whether a person seeking intervenor status has a "substantial interest" in a particular proceeding before the Board.

In some cases, it is obvious that parties have a "substantial interest" in cases, for example, the interest of parties representing substantial consumer groups in utility rate and facilities cases.

As a general matter, whether a party has a substantial interest in a particular proceeding is determined by several considerations, including:

- the nature of the issues and the subject matter of the hearing;
- the degree to which the member organization in question will be affected by the Board's decisions at the end of the proceeding;
- whether or not the economic sector the party proposes to represent is (a) sufficiently distinct from other sectors, and (b) is not already competently represented by another party.

Whether a party has a substantial interest is more a matter of the consideration noted above than the degree of formalism of the engagement with the organization it represents on the details of how the organization guides the participation of its representatives, including its legal counsel. In the absence of circumstances which raise a question in a particular case, the Board should presume the party has the appropriate arrangements in place.

## Response to Questions on 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?*

BOMA agrees with and suggests that the background section, and the answer to the previous question, demonstrates such engagement. More generally, this question is very similar to the two questions asked with respect to how the Board determines intervenor status. The Board's focus should be more on whether the organizations representing an economic sector or group of businesses which consume energy, are distinct, and can be reasonably differentiated from other energy consumer groups.

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

BOMA believes that the Board is called upon to determine the public interest in all of its decisions. Moreover, the Board has discussed the meaning of the public interest in some of its decisions. The Board has sometimes described the "public interest" as aggregation, or an amalgam of several, more particularly defined, interests. It should apply a similar analysis to its determination of what organizations are entitled to claim that they represent an element of the public interest.

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)?*

The Board should not assume that all groups have similar interests in either revenue requirement or cost allocation. It has been BOMA's experience at recent proceedings that there is an assumption that we would naturally demonstrate alignment with other rate-payer groups and clearly this is not the case. Our members are investing heavily in sustainability within their facilities, and while rates are important, our members are far more focussed on their bills - their accuracy, timing, predictability and amount. We strongly support utility programs to encourage conservation in accordance with government policy rather than dismissing them as merely increasing rates and therefore unwanted. Moreover, given the complexity of many of the Board's proceedings (the current combined gas utility facilities is a good example), it is helpful for the Board to have more than one consumer sector's view. These groups are, for the most part, represented by very experienced legal counsel and advisors, who have practiced before the Board for many years. If the Board were to reduce the number of consumer groups, it would deprive the Board of the advice of some very competent and experienced individuals, with a deep understanding of energy regulatory issues, derived from many years of practice before the Board.

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?*

In BOMA's view, it would not be helpful to establish pre-approved budgets for hearing activities, similar to the approval for some policy consultations. Hearings are much more rigorous analytically than most policy deliberations, partly from the built in adversarial nature of the approval, including the necessity for applicants and other parties to provide credible evidence to support theirs, that retains coherence and relevance, under cross-examination by knowledgeable, experienced counsel. Second, hearings are much more unpredictable with respect to the amount of time they may consume. Issues may emerge during a hearing that substantially increase (or decrease) the complexity of the proceedings, or interim hearings with a hearing may develop. The unexpected emergence of a new "issue" is best illustrated by the prominence of the FT-RAM issue in EB-2011-0210. The interim proceeding complication is well illustrated by the current "combined proceedings".

### **Recommended Modifications**

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



BOMA does not recommend any modifications to the Rules and Practice Direction at this time. BOMA will elaborate on these points at the Stakeholder Conference.

*Marion Fraser*

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*on behalf of BOMA*