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September 27, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street
27th Floor
Toronto, Ontario
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Dear Ms. Walli:

**RE: Ontario Energy Board File Number EB-2013-0301
Review of Framework Governing the Participation of Intervenors in Board Proceedings –
Consultation and Stakeholder Conference**

Comments of the Ontario Association of Physical Plant Administrators (OAPPA)

Aagent Energy Advisors is writing this letter on behalf of the Ontario Association of Physical Plant Administrators. The comments which follow first provide general information about OAPPA and its activities as an intervenor. They then respond to the questions posed in the Board's August 22nd, 2013 notice of its review of the framework for intervenor participation in Board proceedings. OAPPA's comments have been written in consultation with Mr. Hugh Briggs of Lakehead University who is the current Chair of the OAPPA Energy Committee.

• **About OAPPA and Its Participation in Board Proceedings**

OAPPA is a not-for-profit organization whose membership includes physical plant administrators for Ontario universities. The main objective of OAPPA is to promote cooperation among physical plant administrators of the provincially-assisted universities on matters including planning, construction, and operations and maintenance of facilities. Its work on energy regulatory matters is one of a number of activities undertaken by OAPPA.

For a number of years, OAPPA has participated regularly in certain proceedings before the Board through its Energy Committee and with representation by Aagent Energy Advisors. Its participation has focused primarily (although not solely) on the rate proceedings of Enbridge Gas Distribution and Union Gas. The majority of the universities are customers of either Enbridge or Union. From an operating perspective, the rate structures, rate levels, and terms and conditions of service of the utilities are of direct importance to the universities. Therefore, the utility rate proceedings have been, and will continue to be, of significant interest given the impact of the outcomes on the operations of the universities' facilities.

Consistent with the main objective of OAPPA, interventions are conducted through the association rather than by individual universities. Since issues are frequently of common interest, an OAPPA intervention provides the opportunity to address matters in a coordinated, efficient, and cost-effective way.

OAPPA is assisted in its interventions by its external advisor. The advisor performs a number of functions: providing case management services, assisting OAPPA to understand the issues and identify those on which it will participate actively, advising on the formulation of positions, and representing OAPPA at the Board. The Chair of the OAPPA Energy Committee is the advisor's primary contact for instructions.

With respect to OAPPA funding for its activities, there is a small annual membership fee which covers a portion of the association's general administration costs. However, members are generally responsible for their own costs for attending meetings or otherwise participating in OAPPA activities. Therefore, with respect to its regulatory activities before the Board, OAPPA member institutions, who are affected by the Board's decisions in the proceedings in which OAPPA intervenes, are responsible for a proportionate share of the costs of the intervention. The costs are covered from the operations and maintenance budgets of the physical plant departments of these universities. The Board typically has determined OAPPA to be eligible for a cost award and subsequently has awarded OAPPA its reasonably incurred costs for the proceedings in which the association has been active. Cost awards serve to offset either completely or partially, the amounts the universities cover from their physical plant operating budgets.

• **Comments in Response to the Board's Questions**

In response to the specific questions posed by the Board in its August 22nd letter, OAPPA would like to provide the following input.

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?*
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?*

OAPPA has combined its comments on the two intervenor status questions.

The Board's framework for intervenor participation should ensure it allows for a relevant and sufficiently broad representation of stakeholder interests in a proceeding so that the resolution of any given issue is informed by the range of opinions, information and experience necessary to achieve a fair and balanced outcome.

Care needs to be exercised in deciding what constitutes an appropriate level of representation. It may appear initially that some parties seeking intervenor status would bring identical viewpoints and information to the proceeding when actually, they offer different but equally valuable perspectives. For example, all large-volume consumers of regulated natural gas distribution services do not necessarily have identical interests and concerns, particularly when it comes to matters such as cost allocation, rate structures and term and conditions of service. A large-volume institutional consumer may approach an issue quite differently than a large-volume industrial consumer as a result of the nature of their

operations. In either case, however, both can contribute important information and a dimension of understanding that could assist in resolving issues before the Board. Therefore, in determining intervenor status, the Board would want to ensure that these different perspectives are represented in the group of participants.

As to requiring a demonstration of consultation with a constituency affected by an application and how the intervenor governs the participation of its representative, the nature of the demonstration needs to be reasonable and practical if the Board decides that it will require such demonstration. It may not be reasonable to require an intervenor's representative to produce detailed communications with its constituency as a demonstration of consultation if that communication includes specifics on possible strategies for addressing issues. It may also prove impractical to the extent the strategies are modified as the proceeding progresses. What may be more reasonable and practical is to produce a statement from the representative's main contact indicating that the necessary consultation has taken place, initial instructions have been provided and to the extent necessary, additional guidance on participation will be provided during the course of the proceeding. One way to approach this might be for the Board to set out general case management guidelines and then require parties to indicate and demonstrate that they are following those guidelines. Please note that OAPPA is offering these comments as a party that is not represented by legal counsel.

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?*

OAPPA is generally of the view that the factors the Board should consider in determining cost eligibility should not be so narrow as to limit stakeholder representation to the point where important perspectives are excluded from the discussions. The determinations should continue to consider cost eligibility based mainly on the interests to be represented.

With respect to the specific cost eligibility criterion addressed by this question, some of the considerations to assess the consumer interests represented by an intervening party could be:

- identifiable ratepayer interests are represented by the party;
- input as a result of separate representation for the group would assist in resolving issues; and
- whether the intervening party represents individual ratepayer interests and concerns that are related and as a result, a group representation offers a more efficient and cost-effective way to participate in proceedings before the Board.

This list of considerations is not exhaustive and reflects only OAPPA's input based on its experience as an intervening association.

OAPPA's views on demonstrating consultation are as described above.

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

No comment at this time.

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)?*

In OAPPA's view, there is a distinction between combining interventions and requiring parties to cooperate and coordinate activities once a proceeding is underway.

A requirement for similarly situated parties to combine interventions seems to suggest this condition would be imposed at the outset of a proceeding. To do so may not be workable if the parties determine after further exploring the issues, through for example interrogatories or a technical conference, that they are not sufficiently aligned in their positions to move forward efficiently and effectively under a fully combined effort.

Requiring intervenors to cooperate and coordinate activities on matters where there may be similar interests once the proceeding is underway is reasonable and in OAPPA's experience, has more often than not been the case in proceedings in which it has been involved.

As the Board's question implies, combined efforts on cost allocation matters may be more challenging for parties representing different consumer interests. It is worth noting that issues related to rate design and terms and conditions of regulated services may also be matters on which combined interventions may be more difficult.

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?*

Administering cost awards in adjudicative proceedings using an approach similar to that now used for policy consultations may be difficult. Consultations tend to be narrower in scope than for example a utility rate proceeding. As a result, consultations lend themselves more to pre-approved amounts (whether time or dollars) for the defined steps in the consultation process. On the other hand, a rate or similar proceeding tends to have a greater number of component steps. Further, the level of activity of some steps may be difficult to determine with precision at the outset since the number and complexity of the issues may not yet be fully understood. As a result, the level of activity initially anticipated may change as the proceeding progresses depending on the outcome of steps such as interrogatories or settlement conferences. Therefore, it is important that parties have the flexibility to respond responsibly and cost-effectively to any changing circumstances. In doing so, the result could be a need for less process such as a shorter hearing or no hearing.

In OAPPA's experience, the principles for awarding costs as set out at section 5.01 of the Practice Direction on Cost Awards have provided significant incentive to control its costs and ensure its requests for costs in any given proceeding reflect responsible and reasonable participation.

Recommended Modifications

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

No comment at this time.

OAPPA appreciates the opportunity to provide its input. Should you have any questions, please contact me at 416.622.9449, X104 or by e-mail at vyoung@aegent.ca.

Please note that OAPPA will not be attending the October 8th stakeholder conference, but will review the transcript of the discussion to determine if it wishes to submit further comments by the October 16th deadline.

Yours truly,

[Original signed by]

Valerie Young
Director, Research and Analysis

cc. Hugh Briggs, OAPPA / Lakehead University (e-mail)