

Hydro One Networks Inc.

7th Floor, South Tower
483 Bay Street
Toronto, Ontario M5G 2P5
www.HydroOne.com

Tel: (416) 345-5700
Fax: (416) 345-5870
Cell: (416) 258-9383
Susan.E.Frank@HydroOne.com



Susan Frank

Vice President and Chief Regulatory Officer
Regulatory Affairs

September 27, 2013

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700,
2300 Yonge Street
Toronto, ON
M4P 1E4

Dear Ms. Walli:

EB-2013-0301 – OEB Review of Framework Governing the Participation of Intervenors in Board Proceedings – Responses to Board Questions

Please find attached the responses to the questions posed in the Board's letter of August 22, 2013 regarding the above noted proceeding.

Our comments focus on the issues of ensuring representation as well as value for costs.

We look forward to participating in the stakeholder session on October 8th as well as other events related to the proceeding.

Sincerely

ORIGINAL SIGNED BY SUSAN FRANK

Susan Frank

Attach.

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?*

Hydro One Networks (“HONI”) feels that demonstration of a substantial interest is critical to meaningful intervention. That demonstration should be on behalf of the intervening party (organization) that sponsors the intervention, the counsel retained by the intervening party to represent them in the proceeding and, of course, and the broad constituency (members of the group) that the organization represents.

The factors that the Board should consider in making that determination include the following:

- Is the constituency directly and specifically affected by the outcome of the specific matters in a proceeding?
- Is there another reasonable and effective way to address the applicant’s interest in the proceeding which would promote the efficient administration of the proceeding?

All of these factors and others are important in demonstrating that a constituency has an interest and therefore should receive support in prosecuting their position(s). However, from the start, what is also critical for the Board to establish is whether the intervening party itself genuinely represents its stated constituency.

Firstly, intervening parties should be able to provide to the Board such items as policy statements, surveys, minutes of consultation meetings and other artefacts that clearly demonstrate that an intervening party understands the objectives of its constituency.

Secondly, the intervening party should demonstrate that the position(s) it takes in matters before the board align with those objectives that have been provided to them by their constituency.

Finally, on an on-going basis, intervenors and their counsel should provide to the Board clear demonstration that the intervening party is providing clear direction to its counsel in support of the objectives of its constituency.

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?*

As stated above, the Board has a right to understand that the actions of counsel are in line with the direction of the intervening party.

This may be provided to the Board in the form of memos or other communication.

This material should not be provided to the Applicants. These items can be made by way of confidential filing to the Board.

The submission can be limited to material items in terms of specific direction provided to the representative. This submission ought not to include every bit of communication.

Regardless however, the Board should always be in a position of comfort that the participants in a proceeding are pursuing the aims of its constituents and it is the obligation of intervenors and their counsel to demonstrate that.

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?*

The Board should continually determine that the positions put forth by an intervening party represent the interests of consumers and are relevant to the proceeding. Some of the factors that contribute to this understanding include:

- Demonstration of consultation with the broader constituency
- Clear policy statements by the intervening party that align with the stated aims of the constituency.
- Surveys, minutes and other items that indicate that the intervening party has canvassed and internalized the objectives of its constituency.

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

Most all intervenors are well intentioned and seek to represent consumer interest in a beneficial way. However, the issues of a proceeding ought to weigh in on the Board's decision on whether an intervening party is supported in their intervention.

For example, a proceeding that refers to particular asset in a specific location should garner intervention only from parties that have an interest in the outcome of that proceeding.

Conversely, parties that represent narrow interests, which may be substantially affected in some proceedings, should not seek to intervene in other matters where their specific interest is not directly affected.

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)?*

There are many areas where intervenors, especially those representing broad constituencies, should combine their efforts in an effective and efficient manner.

HONI acknowledges that there exists today a positive level of cooperation. Often times, certain intervenors are entrusted by their peers to advocate certain issues on behalf of the others. This generally works well.

The Board should continue to encourage intervenors to work cooperatively and efficiently wherever possible. This can be done, for example, with respect to issue list formation and the ordering of examinations at consultation and hearings.

Beyond that, implementing mechanisms to force cooperation among intervenors would be a challenge and the Board ought to be wary that such mechanisms not interfere with due process.

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?*

HONI feels that it would be valuable to all parties for intervenors to prepare and submit estimates of their forecast participation costs.

The budget submissions need not be elaborate or necessarily all encompassing. The Board should acknowledge that circumstances may occur that give rise to the necessity of reasonable additional expenditures in the prosecution of a particular argument. It would be inappropriate for the Board to arbitrarily limit the ability of a participant to pursue its interests.

However, the submission of an expected spending level as a condition of acceptance sets a standard around which the intervening party will be expected to adhere. In the absence of unforeseen circumstance, the intervenor should be expected to expend no more than the approved amount and the Board should be prepared to limit awards in line with expectations set at the commencement of the proceeding by the intervening parties themselves.

Finally, with respect to cost awards, HONI urges to Board to consider making final awards dependent upon the contribution and the value that an intervening party had to the proceeding. The up-front review of forecast costs goes a long way in understanding the cost of the contribution that a party intends to make. However, in the end, that same party should be held to the scrutiny of justifying that the award requested reflects the value that the panel received in the course of the proceeding.

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

The Board may consider the implementation of a more rigorous process by which intervenors will be expected to petition for their right to intervene.

The application should be standardized and all efforts should be made to ensure it is not cumbersome. However, this application by a prospective intervenor should provide the demonstration of the factors listed above and should provide a reasonable estimate of the funds to be expended by the party.