



**CANADIAN FEDERATION  
OF INDEPENDENT BUSINESS.**

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October 16, 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

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The Canadian Federation of Independent Business (“CFIB”) appreciates the opportunity to participate in the above-captioned consultation, and to provide the following final Phase I comments in response to the consultation session of October 8, 2013 and the written comments of other participants. Our comments reflect CFIB’s focus on what we perceive as the most important themes arising from these contributions.

**High Level Issue of Intervenor Role**

All parties acknowledged the role that strong, active, knowledgeable and diverse intervenors play both in improving quality of decisions resulting from the regulatory process, and in maintaining the credibility of the process and the resulting decisions to the public. As Mr. Brett put it, “Allowing intervenors and making them eligible for costs and awarding their costs is essential to have a legitimate and proper debate between the applicant, with its substantial professional and financial resources, and the parties who pay the applicant's rates or the parties who represent another discernible and distinct public interest.”

**Setting Out Specific Problems and Issues**

In its initial comments, CFIB attempted to assist the Board by addressing itself directly to the questions posed in the letter of August 22, 2013. However, other participants pointed out with considerable degree of concern that the Board has not clarified whether it perceives any specific problems or abuses in the present system, which it now seeks to remedy. These participants conclude that the Board presently has wide discretion both in admitting parties to any specific proceeding or consultation, and in making cost awards. If the Board perceives that any party has insufficient stake in the process, or has not contributed

actively, or has abused the process in any way, the Board can act specifically in that situation. They recommend that the Board not set any rules that would limit that discretion in the future.

*CFIB concurs with this position. In our view, if the Board has specific concerns either that the behaviour of intervenors has not been constructive, or that costs have truly been excessive by comparison to the value created, these concerns could be raised and discussed specifically, or addressed by the Board specifically. CFIB believes the Board should continue to decide on a case by case basis whether intervenors are qualified, and whether their participation justifies the costs claimed.*

### **Accountability and Budget**

CFIB believes that its current processes demonstrate consultation with its constituency and appropriate management of its participation, and could therefore satisfy any concerns of the Board on these issues.

We are concerned by the submissions particularly of the EDA that intervenors be required to submit a scope of work and work plan for their interventions. In our view, such a work plan would either be so general and high level as to be useless (i.e. review applicant's evidence, prepare interrogatories, review and analyze responses, etc.), or too specific and restrictive. As pointed out by SEC, an intervenor must plan for its activities and resource commitment in the intervention. However, the specific issues of concentration become known only when the intervenor has had time to review the application thoroughly, and become clarified when the answers to interrogatories are received.

Furthermore, it is unclear what process is implied by the suggested requirement:

- Would Board Staff, or the Board itself, review and approve the plans?
- Would applicants have the opportunity to question or challenge the proposed plans?
- What process would be required if an intervenor proposed to change the plan?

In CFIB's view, a requirement for formal approval of intervenors' work plans would be unnecessarily restrictive, and add time and costs to the process, but would not necessarily improve management of interventions.

As to the suggested requirement for budgets, it is also unclear when in the process such budgets would need to be prepared, and whether they would represent a hard cap on intervenor costs. Several parties referred to a prior process for participant funding that involved pre-approval of cost levels, and the problems that arose in that process.

In CFIB's view, it would not be unreasonable for the Board to maintain statistics as to the level of effort of intervenors on similar proceedings, to consult with Staff as to where a particular proceeding fit on the spectrum of complexity, and on that basis to draw conclusions as to the reasonableness of cost claims of an intervenor. *However, it would be counterproductive to require intervenors to in effect propose a predetermined cap on their own efforts in a case, and especially to do so before the applicant's submissions have been thoroughly reviewed to identify issues and establish a preliminary position on them.*

Our understanding of the position of some LDC participants is that, not only should there be a cap on intervenor costs, but that the cap should be in aggregate – i.e. a total amount to be shared by all intervenors. As discussed below, CFIB (and other intervenors who made presentations or comments) believe that intervenors can and do cooperate and consult with one another to increase efficiency. CFIB believes that an aggregate cost cap might have the effect of reducing cooperation, as each intervenor tries to ensure that the concerns of its own constituency get adequate representation within the limits imposed.

In addition, an aggregate cap would discourage new intervenors from participating. This in our view is contrary to the Board's policy of encouraging broad participation of stakeholders, and would have a detrimental effect on the credibility of the regulatory process.

CFIB has the same concerns about a budget requirement as it has about a work plan requirement:

- Would Board Staff, or the Board itself, impose, review or approve the budget;
- Would applicants have the opportunity to question or challenge the proposed budgets;
- What process would be required if an intervenor proposed to change the budget?

These questions suggest that a budget requirement would add complexity and costs to the regulatory process.

If a requirement for intervenor budgets were to be imposed, CFIB recommends that:

- (a) Such budgets be individual to each intervenor and not aggregate; and
- (b) That the timing for the preparation and submission of budgets follow submission of the applicant's evidence and a reasonable period for intervenor review.

### **Combining Interventions**

CFIB supports the idea of cooperation and collaboration among intervenors who have a common perspective on one or more issues in a proceeding. We have not previously intervened in the rate approval applications of any electricity or gas distributor or transmitter. We are glad to hear established intervenors say that a high level of cooperation already exists, and would cooperate in good faith with other parties if we do participate in the future.

However, as some other parties have said in this consultation, an intervenor community consisting of numerous stakeholders is of value in the regulatory process. While the interests of all customers are essentially aligned in wanting lower rates, higher reliability and better service, different groups may have different views of the appropriate trade-offs among these factors. As well, it is important to have more than one independent review of an applicant's position or proposal.

We notice with interest that in this consultation, a number of electricity distributors came forward with comments individually or in small groups, despite the fact that their advocacy organization, the EDA, also participated. This demonstrates that despite the fact that all distributors would be "similarly situated" in regard to the issues under discussion, different opinions and priorities exist, and in CFIB's view, each was valuable to the discussion. It is the same for intervenors.

### **Role of Board Staff**

It was suggested that Board Staff could play more of an advocacy role in hearings, taking a consumer position against the applicant on certain issues, in substitution for intervenors. CFIB does not support this proposal for the following reasons:

- It presupposes that all intervenor groups would have the same position on the selected issues, which may or may not be the case in any specific proceeding;
- It results in loss of the value of having multiple independent reviews of an applicant's proposals;
- It has not been demonstrated that this approach would reduce total regulatory costs. A wider role for Board Staff would add to the level of effort on the part of Staff and, as previously mentioned,

there is already cooperation among intervenors where there is a shared view of an issue. Intervenors would still have to review and consider the complete application in order to prepare positions on the issues on which intervenors would have differing and potentially conflicting positions, and therefore their work load might not be significantly reduced;

- Board Staff would no longer have a neutral role in ensuring a complete record before the Board; and
- Board Staff would no longer be a source of neutral and unbiased information and advice to applicants and other parties in their dealings with the Board.

### **Broad Application of Intervenor Participation Framework**

Almost all of the discussion and comment focused on the role of intervenors in rate proceedings, with some discussion of landowner issues in approvals of new facilities. CFIB understands that any framework for participation of intervenors would also apply in policy consultations. We believe that the importance of keeping the process open to the input of a range of stakeholders is at least as high in policy consultations as in specific applications; and in policy consultations the views of “similarly situated” parties are even more likely to differ. We therefore urge the Board to consider the effects on all types of processes in deciding whether to make changes in the rules under which the public participates before it.

All of which is respectfully submitted,

**Canadian Federation of Independent Business**



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Vice President, Ontario

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