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Ontario Energy Board
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Attention: Ms. Kirsten Walli
Board Secretary
Via Email: boardsec@ontarioenergyboard.ca

RE: Review of Framework Governing the Participation of Intervenors in Board Proceedings – Consultation - EB-2013-0301

The Huron County Federation of Agriculture (HCFA) is pleased to provide comments to the Board in regard to its review of the framework governing the participation of intervenors in Board proceedings.

The HCFA acts in an advocacy role on behalf of the approximately 1940 member/supporters who are agricultural producers in Huron County. Our involvement in Board proceedings in the past have related to the general use of agricultural land, the environmental impacts, project risk assessment, landowner compensation, environmental insurance coverage, the impact on normal agricultural practices in the area, and the general agricultural interests of the area and our members. Our comments to this review will reflect this past involvement of bringing our members/supporters perspective to the process.

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?

The HCFA position is that a landowner or a group of landowners, with property or property rights affected by an application before the Board will always have a “substantial interest” in that proceeding and therefore should have no restrictions regarding participation as an intervenor. There should be no attempt to deter an individual landowner or a group of landowners that has property within the area of an application, from becoming an intervenor.

From a landowner perspective, the present system appears to be adequate. The OEB is in full control of who qualifies as an intervenor and cost award rates. It is the Board's discretion as to the importance of the information provided to the Board in assisting the Board to make their final decision and the value that the Board deems appropriate for that intervenor's information.

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?

It would seem contrary to the democratic process for the OEB to place any restrictions or conditions on individual landowners or groups of landowners who will be directly impacted, when seeking intervenor status. The same can be said of the legal counsel/representative, which is being paid for by the intervenor or a group of intervenors.

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 present regulations give full control and discretion to the OEB on who is allowed to be eligible for cost awards and would seem to work very well.

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

As stated in our replies under the "Intervenor Status" questions, landowners who are our members/supporters have a significant interest in applications before the Board that affect lands and property within an applications project area. In our opinion the Board should view these landowners as an important part of the "public interest" relevant to their mandate.

In some situations, a landowner's property could be subject to some form of expropriation to facilitate the project going forward, and thus there should be no restrictions on intervention and/or eligibility for costs for those landowners.

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)?

From our perspective, since the OEB has powers to order storage rights, pipeline easements, conditions of approval, etc, on to private property, even though the landowner is not in agreement, it would be most unreasonable of the OEB to set limits or conditions that would not allow eligibility for a full recovery of costs for the affected landowner.

In many cases landowners will combine their efforts, but because of the various scenarios that could unfold, they may wish to operate separately from each other, and we feel they should have this ability.

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 regards to 'Cost allocating, pre approved budgets, pre established amounts, pre established amounts for disbursements', the HCFA feels that to set predetermined limits on these before a proceeding actually takes place would be nothing more than a dignified guess. For example in one application we were involved in, a proposed 2.5 day oral hearing turned into an 11 day oral hearing and the final results were not completed until a year later. Landowners who are protecting their interests, by participating in proceedings need to be sure that they will have the ability to fully recover the costs they incur, and not have them pro-rated to fit a predetermined figure. If limits are placed on cost awards, you would invariably limit landowner participation, which is not the approach we wish to see the Board take.

Recommended Modifications

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

Due to the uncontrolled rising costs of legal counsel and disbursements, all fees set out in the 'Practice Direction for Cost Awards' should be updated on an annual basis.

HCFA would agree with the contents of the Gas Pipeline Landowners of Ontario (GAPLO) and the Lambton County Storage Area (LCSA) submission in regards to landowner interventions - the automatic intervenor status for landowners whose interests in land are directly affected by the Board proceeding, with the right to participate and eligibility for cost recovery. As an agricultural based organization, we concur with the GAPLO/LCSA comment that the current ten day period to apply for intervenor status is too tight of a time frame which often falls within holiday periods or busy farming seasons.

The HCFA would not support a move to the "Environmental Registry" type of application, whereby applications are posted on-line for comment by the public at large. This process would remove the Board from engaging with qualified intervenors, it would eliminate the oral hearing process and the ability to cross examine at a hearing, and would eliminate cost awards. This method would also have the potential to be used by special interest groups and would distort the overall consultation results.

There have been a number of HCFA members recently subjected to the Environmental Review Tribunal (ERT) process in regards to large numbers of renewable energy projects being approved in Huron County. Members have found these Tribunals are able to narrow their issues list to one or two items which eliminates issues affecting member's personal property and businesses from being heard. This amounts to a type of expropriation without

any compensation. The only alternative for them to get their issues heard is to go the Provincial Court system, which subjects them to not only their own court costs but costs of the opposing parties. The HCFA and its members would not support any regulatory changes by the OEB that would mirror this approach, and only leave the Court system as their alternative.

Respectfully Submitted,

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cc: HCFA Board of Directors
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