



October 16, 2013

By RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700, 2300 Yonge Street
P.O. Box 2319
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

Re: **OEB Review of Framework Governing the Participation of Intervenors in Board Proceedings –Board File No. EB-2013-0301 –Large Distributors –Phase One Reply Comments**

1. Pursuant to the Ontario Energy Board's (hereinafter "OEB" or "the Board")'s directions set out on page 4 of the Board's notice of Consultation and Stakeholder Conference issued August 22, 2013, the following reply comments are submitted on behalf of a group of Large Distributors consisting of Enersource Hydro Mississauga Inc, Horizon Utilities Corporation, Hydro Ottawa Limited, PowerStream Inc., and Veridian Connections Inc. (hereinafter referred to as "the Large Distributors").
2. The Large Distributors have reviewed the submissions filed by parties on September 27, 2013 and listened attentively to the dialogue and debate that took place at the stakeholder conference on Tuesday October 8, 2013 and offer the following by way of response. In this response the Large Distributors endeavour to address the main arguments put forward by other parties. Where the Large Distributors fail to address any particular argument or concern should not be construed as agreement with said argument or concern.

High Level Observations

3. The Large Distributors observe that the issues under consideration in the current proceeding are all inextricably linked and thus looking at one in isolation of the others is ill-advised as doing so fails to consider the presence or absence of variables that may be addressed in Phase Two of this proceeding. The requirement to demonstrate financial need¹ and whether and to what extent LDCs may be mandated to consult with consumers and stakeholders prior to filing their rate applications or the creation of a Consumer Advisory group may profoundly impact the efficiency and effectiveness of the overall final framework. As such the Large Distributors reserve the right to revisit and adjust as necessary their positions as regards intervenor eligibility, and cost award eligibility.

¹ Proposed by ENWIN, Energy Probe and Union Gas



Pre-filing consultations

4. In parties' written submissions filed September 27, 2013, few parties addressed the question of how to adjust the current mechanisms permitting intervenor participation in OEB proceedings to reflect their potential participation in any pre-filing consultation or engagement, and the issue was largely overlooked as an issue at the stakeholder conference. For those that did comment on this issue in their written submissions, most argued that a pre-filing engagement with stakeholders will result in a better application² or a better understanding of consumer issues³, but that it cannot supplant representation by expert intervenors at hearings.⁴ VECC, however, cautioned that the pre-filing stakeholder involvement should not be "some kind of half-way house pre-approval process of distributor applications".⁵ The EDA similarly cautioned the Board against establishing a duplicative process and argued that the nature and scope of any pre-filing engagement should be left to the LDC.
5. In response, the Large Distributors note that the objective of Phase One of the current proceeding was to examine "how ... early consultation and engagement by a distributor with customers and other stakeholders might affect the role of intervenors in the more formal process that is initiated by the Board once an application is filed".⁶ The consumer groups, however, have taken the position that the pre-filing engagement process is neither to affect the participation of intervenors in the formal process nor to diminish the expertise and influence that expert intervenors impart to the credibility of the record.
6. To the Large Distributors it therefore remains unclear. LDCs may, at their discretion, engage in pre-filing consultations and receive input from customers and stakeholder representatives. If such consultation exists, it stands to reason that the role played by intervenors in the formal process may be reduced. The only way to prevent duplication is to limit intervenor participation in the formal process to only those issues that could not be resolved in the pre-filing consultation. This is precisely what the Large Distributors recommended in their written comments. Regardless, it is clear that the relationship between feedback gathered in the pre-filing consultation and feedback gathered in the formal OEB process and opportunities for duplication has not been fully explored by parties. The Large Distributors accordingly recommend that this discussion form part of the issues under consideration in Phase Two of the proceeding.

Role of Board Staff

7. The other variable that impacts the role of intervenors and the costs incurred by LDCs, is the role of Board Staff in the proceeding and in particular whether they act as intervenors in a proceeding or as advisors to the Board. Some parties⁷ have advocated for a more robust and constructive role for Board Staff including in the preparation of the first round of interrogatories.

² Page 2, VECC Written Submission

³ Page 8, CCC Written Submission

⁴ VECC, CCC

⁵ Page 3 of VECC's Written Submission

⁶ Page 2, EB-2013-0301 – OEB notice of proceeding cover letter dated August 22, 2013

⁷ Page 3 of EDA's Written Submission



8. In response, the Large Distributors agree that the role of Board Staff needs to be clarified. As noted in its stakeholder presentation, the Large Distributors agree that Board Staff could take a lead role in initiating interrogatories to set the scope of issues of relevance to the Board and intervenors could follow up in a second phase of interrogatories with supplemental issues provided they are of direct relevance to the proceeding. Representative for the Power Worker’s Union, Mr. Stevenson put it well when he noted the following at the stakeholder conference:

I actually think that you're not going to deal -- create a lot of savings on this intervenor thing unless and until you decide the question of, what is the role of the intervenor. And one possible solution to that -- and this may be a Phase 2 issue -- is the issue of, you know, what is the proper role of Board Staff⁸

Intervenor Status

9. Parties differed substantially on the question of the factors that should govern eligibility as an intervenor. Several parties⁹ supported introducing a requirement that applicant intervenors provide evidence demonstrating representation of a constituency, while other parties¹⁰ strongly opposed such requirement. Other parties¹¹ recommended that intervenor applicants be required to provide evidence of substantial interest in significant issues. The Large Distributors supported the latter and described the value of this requirement at the stakeholder conference as follows:

We don't see any reason why anyone should not be involved in an intervenor -- as an intervenor if they wish to be. We would like to see, from the distributors' point of view, we would like to see that they have a substantial interest and this is a significant issue or issues, and express those, what they are and what they may be. So that way, we can maybe focus the hearing in on those key issues instead of just a wide open discussion.¹² (Emphasis added)

10. VECC presented the most vocal opposition against the requirement to demonstrate substantial interest noting the following:

We've seen much of the proposed additional filing, particularly on the issue of substantial interest and other suggested preliminary requirements, as busy work that will simply increase the workload with little effect.¹³

11. VECC continued by noting:

..... the traditional question is to look at substantial interest test as an exclusionary approach, a way to narrow the number of parties in a proceeding. That's the traditional purpose, and whether you're talking about substantial interest or you're talking about the corollary terms that are used in the judicial system, the purpose is to narrow. I think the Board's intent has been to broaden, has

⁸ Transcript page 170 line 16

⁹ EDA, CHEC, Enbridge and Union Gas, CFIB, APPro, PWU, OPA, IESO

¹⁰ SEC, VECC, CCC, NAN, Energy Probe, CM&E, BOMA, OAPPA

¹¹ CHEC, Union Gas, PWU, OPA, IESO, THESL, LD

¹² Transcript Page 91, Line 7

¹³ Transcript page 17, line 21



been to say: How can we engage stakeholders more effectively? How can we more efficiently bring perspectives to the table?¹⁴

12. The Large Distributors disagree with VECC's characterization that the substantial interest test is designed to narrow the number of participants. On the contrary, the objective is intended to have intervenors explain in greater detail their interests in the proceeding and its relevance to the constituency they represent. The efficiency sought by this measure is to contain the scope of perspectives brought to the table to only those that are relevant to the record and directly impacting to the intervenor in question. The Large Distributors don't believe this is an onerous requirement and it serves to provide predictability to the LDC and reduce duplication of effort. Both of these outcomes will add to the effectiveness and efficiency of the subsequent proceeding.

Cost Eligibility (Budgets and Caps)

13. For those intervenors deemed eligible to receive costs in a proceeding, Large Distributors recommend that the Board adopt a requirement that intervenors provide a more precise "up front" articulation of their substantial interest in significant issues to focus their interventions. If the issues are insignificant or not directly impacting an intervenor's constituency then they would be ineligible for costs associated with their participation on those issues. The intent is to capitalize on some intervenors' admitted expertise in OEB proceedings in a manner that encourages more efficient and effective participation by intervenors to the benefit of ratepayers.
14. The Large Distributors note that the question of whether cost eligibility should be made contingent on an intervenor's financial need as well as whether participation at LDC initiated consultations are factors that will only be reviewed in Phase Two of this proceeding but that are nevertheless tied to factors determining cost eligibility. The Large Distributors accordingly reserves final comments for Phase Two.
15. Regarding intervenors deemed eligible for cost awards, several parties advocated in favour of either or both *a priori* budgets¹⁵ or cost award caps¹⁶. Other parties suggested that such measures would add a layer of bureaucracy will lengthen the process or give an advantage to the utilities.
16. The Large Distributors support the use of *a priori* budgets and recommend that, to be eligible for costs, intervenors should be required to file such budgets. At the stakeholder conference the Large Distributors explained that an *a priori* filing of budgets provides them with predictability and that adjustments can be made as necessary to recognize the discovery of new issues. While SEC objects to the necessity of budgets, the Large Distributors note that SEC nonetheless acknowledges that it must create a budget before its participation in each hearing. The following is noteworthy.

I can predict after a quick look at the application roughly how much it's going to take, how much time it's going to take to review the application, how much time it's going to take to do IRs, et

¹⁴ Transcript page 21, line 24

¹⁵ EDA, Co-Op Utilities, Union Gas, LD, CFIB

¹⁶ ENWIN, EDA



cetera, et cetera. In fact, I have to do that because I need to know what resources to have available.¹⁷ (Emphasis added)

17. With respect to cost caps, the Large Distributors believe that there is some merit to further examining the use of a total cost cap for an entire proceeding further to the proposals introduced by ENWIN. The Large Distributors support further examining proposals on how a total cost cap could be efficiently applied.

Cost Awards (proof of measures taken to avoid duplication)

18. In their written submissions and at the stakeholder conference several parties pointed to existing measures taken to reduce duplication of intervenor submissions and representations. The Large Distributors note that some parties have recommended that the Board Staff take a more active role in “case managing” representations of intervenors or that cost awards be more closely scrutinized by Board Staff.¹⁸ The Large Distributors support the recent efforts of intervenors to reduce their duplication and agree more can be done by intervenors and by the Board Staff to make the process more efficient. As noted above, and in the Large Distributors’ written submission, the Board could require that intervenors designate a topic lead in a proceeding and the Board could institute a new process whereby it would ask the first round of interrogatories and let intervenors participate in a second round to avoid duplication. This would help avoid the duplication of interrogatory responses that applicants must file.¹⁹
19. The Large Distributors submit that the Board has the tools necessary under Section 5.01 of its Practice Direction on Cost Awards to measure efforts made by intervenors to avoid duplication.

Conclusion

20. The Large Distributors do not dispute that the intervenor representations made at OEB hearings add to the credibility of the Board’s decisions and as such provide value for ratepayer monies. Having said this, the Large Distributors believe there is considerable scope in the current framework to add transparency and accountability to the current processes which will translate into a more efficient and cost effective intervenor participation. Contrary to the position of SEC, the overall purpose of the first phase should be to reduce overall costs in order to increase efficiency for ratepayers. The Large Distributors caution the Board against modifying eligibility and cost award criteria in the framework without first comprehensively reviewing the benefits of other models. For these reasons, the Large Distributors look forward to providing its views in the second phase of this proceeding.

¹⁷ Transcript page 166 line 25, Jay Shepherd testimony

¹⁸ Page 12, Enbridge written Submission filed September 27, 2013

¹⁹ For example, out of almost 800 interrogatories received in its last COS proceeding, Enersource noted that nearly 100 were duplicative in nature. Further, Hydro Ottawa indicated during the October 8th stakeholder conference that duplicative interrogatories accounted for 5.5% filed in its COS proceeding.



Respectfully,

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