

**Ontario Energy
Board**

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**Commission de l'énergie
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BY E-MAIL AND WEB POSTING

August 22, 2013

**TO: All Rate Regulated Electricity Distributors
All Rate Regulated Natural Gas Distributors
All Rate Regulated Electricity Transmitters
Ontario Power Generation
Ontario Power Authority
Independent Electricity System Operator
All Other Interested Parties**

**RE: Review of Framework Governing the Participation of Intervenor in Board
Proceedings – Consultation and Stakeholder Conference
Board File No. EB-2013-0301**

The Board has initiated a review of the framework governing the participation of intervenors in applications, policy consultations and other proceedings before the Board. The objective of the review is to determine whether there are ways in which the Board's approach to intervenors might be modified in order to better achieve the Board's statutory objectives.

The review will proceed through two phases, as set out further below. The first phase will examine whether there are modifications that should be made, in the near term and within the existing framework, regarding the Board's approach to intervenor status, cost eligibility and cost awards. The second phase will examine whether, over the longer term, the Board should consider adopting a different model regarding the representation of consumer interests in Board proceedings.

Background

Intervenors currently play an active and important role in Board proceedings. Intervenors have typically included groups or associations representing the interests of residential, institutional, commercial, and large industrial energy consumers. Groups

also intervene in Board proceedings on behalf of generators, landowners, marketers, retailers, energy service providers, and other types of energy market participants. Several environmental and policy advocacy groups also intervene actively in Board proceedings. Individual customers and landowners also appear as intervenors in some proceedings.

The participation of many of these groups and associations in Board proceedings has been facilitated by the Board's current approach to intervenor cost awards as outlined in the Board's *Practice Direction on Cost Awards* ("the Practice Direction"). During the 2012 - 2013 fiscal year, the Board awarded over \$5.5 million to 38 eligible intervenors in proceedings before the Board.

The review is appropriate at this time for several reasons. First, the Board is implementing, under the Renewed Regulatory Framework for Electricity, a new approach to the regulation of electricity distributors. A central feature of this new approach is a strong emphasis on the need for each electricity distributor to engage with a broad range of customers and other stakeholders during the development of the capital and operational plans reflected in the distributor's rate application. The Board is interested in considering how this 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.

Second, the Board is undertaking a review of its application and hearing process, with the goal of enhancing the efficiency and effectiveness of that process. The Board is interested in considering whether changes to the Board's approach to the determination of intervenor status, cost eligibility and cost awards might further enhance the efficiency and effectiveness of the application and hearing process.

Third, the Board is also undertaking a review of the way in which it consults with stakeholders, including consumers, in the review and development of regulatory policy, including the amendment of codes and rules under the *Ontario Energy Board Act*. The Board anticipates that, going forward, it will, in appropriate circumstances, include the use of consumer focus groups and consumer surveys in the policy development process.

First Phase – Review of the Board's Current Approach

The first phase will focus on the Board's current approach to intervenor status, cost eligibility and cost awards. During this first phase the Board will invite interested parties to submit written comments and to take part in a Stakeholder Conference. Further details are set out below.

The Board's current approach to intervenors is set out in the Board's *Rules of Practice and Procedure* ("the Rules") and in the Practice Direction. The Rules and the Practice Direction give the Board considerable discretion with respect to matters such as intervenor status, eligibility for cost awards, and the assessment of costs. The Board is interested in considering how that discretion should be exercised going forward and whether there are any modifications that should be made to the Rules and the Practice Direction. In particular, the Board is interested in considering written comments on the following questions:

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?

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

Recommended Modifications

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

Written Comments

All interested parties are invited to submit written comments on these questions to the Board by Friday, September 27, 2013. All comments received will be posted on the Board's website.

Stakeholder Conference

A Stakeholder Conference will be held at the offices of the Board on Tuesday, October 8, 2013 commencing at 9:30 a.m. and ending at 4:30 p.m. The purpose of the Stakeholder Conference is to provide a forum for discussing the questions listed above. The Stakeholder Conference will be transcribed.

Further Comments

Following the Stakeholder Conference, all interested parties are invited to submit further written comments on the issues explored at the Stakeholder Conference. These further written comments are to be submitted to the Board by Wednesday, October 16, 2013.

Conclusion of the First Phase

The Board will consider the proceedings of the Stakeholder Conference and the written submissions received to determine whether Board guidance is needed in relation to matters involving intervenor status, cost eligibility or cost awards, and whether any amendments to the Rules or the Practice Direction are warranted.

Details Regarding the Stakeholder Conference

Presentations

The Board will provide participants with an opportunity to make a presentation at the Stakeholder Conference. The Board encourages participants with common viewpoints

to consult with one another and make a joint presentation.

If the number of proposed presentations warrants an extension of the Stakeholder Conference, the conference will continue on October 9, 2013, commencing at 9:30 a.m.

Location and Registration

Date: Tuesday, October 8, 2013
Time: 9:30 a.m. to 4:30 p.m.
Location: Ontario Energy Board
West Hearing Room,
25th floor, 2300 Yonge Street, Toronto, ON M4P 1E4

The Stakeholder Conference will be broadcast over the web to allow remote participation. Detailed instructions on how to participate remotely will be sent to all registered participants on or before the conference date.

An agenda will be issued prior to the Stakeholder Conference.

Interested participants wishing to attend the Stakeholder Conference are asked to register by sending an e-mail to veronica.mendes@ontarioenergyboard.ca no later than 4:30 p.m. Wednesday, September 25, 2013. Please include "Intervenor Stakeholder Conference Attendance" in the subject line and provide the following information in the body of the e-mail:

- participant/organization name;
- name(s) of attendees to be registered;
- whether the participant intends to make a presentation, and if so, the presentation topic(s);
- whether the participant intends to attend in person or by web; and
- a contact name, telephone number and e-mail address.

Participants intending to give a presentation are asked to submit an electronic copy of any presentation materials to the Board Secretary by Monday, September 30, 2013, in accordance with the filing instructions set out below.

Please note that seating will be limited so participants are asked to limit conference attendance to two persons. As noted above, however, capacity for participation will also be available on a remote basis through the Board's website.

Second Phase – Review of Alternative Models

The second phase of the review will examine whether, over the longer term, the Board should consider adopting a different model regarding the representation of consumer interests in Board proceedings.

Other jurisdictions in Canada and elsewhere have adopted models regarding the representation of consumer interests that are markedly different than the model currently employed by the Board. For instance, Alberta and Nova Scotia have each adopted a model under which consumer interests in energy regulatory proceedings are represented by a consumer advocate. Both the Alberta Utilities Commission and the Nova Scotia Utility and Review Board make cost awards available to other intervenors on the basis of financial need.

In the United Kingdom, the energy regulator, Ofgem, uses a number of mechanisms to ensure that consumer interests are represented and heard in its proceedings and consultations. A Consumer Challenge Group, comprised of experts in energy consumer issues, provides advice to Ofgem regarding network price controls and related matters. In addition, consumer panels, comprised of residential consumers from across the UK, provide input into Ofgem's development of policies of particular interest to consumers, such as its recent review of supplier tariffs.

The Board's objective in this second phase is to identify and evaluate the range of models that the Board could consider for implementation in Ontario in place of the Board's current approach to the representation of consumers. The second phase will assess the advantages and disadvantages of such models compared to the Board's current approach (as that approach may have been modified as a consequence of the first phase outlined above).

Further details of this second phase of the review will be provided in due course.

Invitation to Participate and Cost Awards

Interested stakeholders must register their intent to participate in the consultation by filing a letter with the Board by September 6, 2013 in accordance with the filing instructions set out below. Cost awards will be available to eligible persons under section 30 of the *Ontario Energy Board Act, 1998* for participation in cost eligible activities as set out in Appendix A. Costs awarded will be recovered from all rate regulated electricity distributors, all rate regulated natural gas distributors, all rate regulated electricity transmitters, Ontario Power Generation, the Ontario Power Authority, and the Independent Electricity System Operator, apportioned on a pro-rata basis relative to their contributions to the Board's annual cost assessment.

Appendix A contains information regarding cost awards for this consultation, including in relation to eligibility requests and objections.

Filing Instructions

Please submit electronic copies of filings in searchable/unrestricted Adobe Acrobat (PDF) format through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice> and also file two paper copies at the address below. You will need a user ID to make filings through the Board's web portal. If you do not have a user ID, visit the "[e-filings services](#)" webpage on the Board's website at www.ontarioenergyboard.ca and fill out a user ID password request.

Please use the document naming conventions and document submission standards outlined in the document entitled "RESS Document Preparation – A Quick Guide" also found on the e-filing services webpage. If the Board's web portal is not available, electronic copies of filings may be filed by e-mail to boardsec@ontarioenergyboard.ca. If you do not have internet access, please provide a CD containing your filing in PDF format as described above to the Board Secretary at the following address:

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

All filings to the Board must be received by the Board Secretary by 4:45 p.m. on the required date. Filings must quote file number EB-2013-0301 and include your name, address, telephone number and, where available, your e-mail address and fax number. All filings received by the Board in relation to this consultation will be available for viewing at the Board's offices and will be placed on the Board's website.

Questions about this consultation process should be directed to Stephen Cain at stephen.cain@ontarioenergyboard.ca or 416-440-8144. The Board's toll-free number is 1-888-632-6273.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary

Attachment: Appendix A Cost Awards

Appendix A

To Cover Letter Dated August 22, 2013

EB-2013-0301

COST AWARDS

Cost Award Eligibility

The Board will determine eligibility for costs in accordance with its *Practice Direction on Cost Awards*. Any person intending to request an award of costs must file with the Board a written submission to that effect by **September 6, 2013**, identifying the grounds on which the person believes that it is eligible for an award of costs (addressing the Board's cost eligibility criteria as set out in section 3 of the Board's *Practice Direction on Cost Awards*). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the Board's website.

If a Board licensee has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **September 18, 2013**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting participants.

Eligible Activities

Cost awards will be available in relation to the submission of written comments on the questions listed in this cover letter; in relation to participation in the Stakeholder Conference; and in relation to the submission of written comments on the issues explored at the Stakeholder Conference. The maximum number of hours allowed per participant for these eligible activities are:

- written comments on questions listed in the cover letter20 hours
- preparation, attendance and report on Stakeholder Conference15 hours
- written comments on Stakeholder Conference issues.....10 hours

Cost Awards

When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of its *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied. The Board expects that

groups representing the same interests or class of persons will make every effort to communicate and co-ordinate their participation in this process.

The Board will use the process set out in section 12 of its *Practice Direction on Cost Awards* to implement the payment of the cost awards. Therefore, the Board will act as a clearing house for all payments of cost awards in this process. For more information on this process, please see the Board's [Practice Direction on Cost Awards](#) and the [October 27, 2005 letter](#) regarding the rationale for the Board acting as a clearing house for the cost award payments. These documents can be found on the Board's [Rules, Codes, Guidelines and Forms](#) webpage.