

September 27, 2013

VIA RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario
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Dear Ms. Walli:

**Re: OPG's Written Submission: Review of Framework Governing
the Participation of Intervenors in Board Proceedings
Board File No. EB-2013-0301**

I am writing in response to the OEB's August 22, 2013 letter inviting submissions on the first phase of its consultation on intervenor participation in OEB proceedings.

As a provincially owned company, OPG is committed to open public processes and encouraging responsible public participation. Given the OEB's intent to ensure greater cost control in all aspects of the electricity sector, however, it is appropriate to review how the efficiency and effectiveness of public participation can be improved so that consumers, who ultimately pay the cost of regulation, receive the best value for the money spent.

This first phase of the OEB's consultation addresses the Board's current approach to intervenor status, cost eligibility and cost awards. Below OPG presents its views on ways in which the current intervenor process can be improved.

In the subsequent phase of this consultation, OPG looks forward to a wider ranging discussion on the role of intervenors and Board staff in proceedings and how the current model can be changed to better represent the interests of consumers and the public generally.

Introduction

To facilitate the OEB's consideration of these comments, OPG has organized them as responses to the questions posed in the invitation letter.

Questions on 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?*

Intervenors are currently required to demonstrate a substantial interest in each proceeding as part of their letter of intervention (OEB Rules of Practice and Procedure, §23.02). In addition, potential intervenors who claim to represent a particular constituency should be required to demonstrate in their intervention how they intend to keep their constituency informed about the proceeding and how the organization will direct participation of its counsel/consultants during the proceeding. At least annually, each intervenor group should also be required to provide information about its governance structure and finances (e.g. articles of incorporation or by-laws and financial statements).

The governance documentation should explain what the group intends to accomplish in terms of its participation in OEB proceedings and how the group's activities are supervised, including its organizational structure and the names of its executive leadership and directors or members of its governing body. The financial documentation should show the organization's financial results and the sources and uses of the funds that it receives including the funds received from cost awards during the previous year.

Questions on 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 response above to the questions on intervenor status provides OPG's views on this question.

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

For groups that claim to represent consumers, the OEB should require an annual demonstration of the group's mandate, organization and finances as set out above.

- 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)?*

Prior to interrogatories, the OEB should require that all intervenors participate in a case management meeting with Board staff convened to determine how best to allocate primary responsibility for the issues in the case. This allocation of issues to intervenors should be documented and filed with the OEB and show the lead intervenor (or intervenors for large or complex issues). The specificity by which the issues are defined will depend on the scope and complexity of the proceeding. The OEB should not require that each issue be addressed solely by the designated intervenor. However, if an intervenor other than the designated intervenor claims costs for participation on an issue, the OEB should require the party to demonstrate a unique contribution to the resolution of the issue prior to awarding costs.

- 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 general, OPG believes that it would be difficult for the OEB to set advance budgets for hearing activities; instead, the OEB should scrutinize the reasonableness of the costs claimed. In particular, while the OEB should allow full cost awards for substantial contributions on material issues, it should also reduce the costs awarded (or allow no costs at all) for: 1) time spent on immaterial issues, 2) efforts that duplicate the work of other parties or Board staff, and 3) time spent inefficiently.

Question on Recommended Modifications

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

Yes. As discussed above, in cases heard orally the OEB should require a case management meeting where the parties opposing the application meet with Board

staff and develop a document designating a lead intervenor for each issue in the case.

In addition, to allow the OEB to better scrutinize costs awards and reduce duplication, the OEB should require intervenors to account for their costs by issue. This approach will allow the OEB to better assess the reasonableness of costs claimed and see if these costs were justified in light of the issues raised. The California Public Utilities Commission (CPUC), which has awarded some \$21.4M in intervenor compensation from 2008 through 2012, uses this approach (See CPUC, Rules of Practice and Procedure §17.4), which can be found at:

http://docs.cpuc.ca.gov/published//RULES_PRAC_PROC/70731.htm#P1018_194394.¹

Yours truly,

[Original Signed By]

Andrew Barrett

¹ Extensive information on the CPUC intervenor compensation program can be found at: <http://www.cpuc.ca.gov/PUC/IntervenorCompGuide/> . In addition, the California State Auditor recently issued an Audit Report on the CPUC intervenor compensation program, which can be found at: <http://www.bsa.ca.gov/pdfs/reports/2012-118.pdf> .