September 27, 2013

Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Re: Review of Framework Governing the Participation of Intervenors in Board Proceedings – Board File No. EB-2013-0301

Dear Ms. Walli:

Attached please find Cornerstone Hydro Electric Concepts Association's (CHEC) comments with respect to the Board's review of the framework governing the participation of intervenors in Board proceedings.

As you are aware, CHEC is an association of thirteen local distribution companies (LDC's) that have been working collaboratively since 2000. The comments over the following pages express the views of the CHEC members. They also address the several questions outlined in the letter dated August 22, 2013 "Review of Framework Governing the Participation of Intervenors in Board Proceedings – Consultation and Stakeholder Conference", and follow the same format (Attachment A).

We trust these comments and views are beneficial to the Board's review process. CHEC looks forward to continuing to work with the Board in this matter.

Yours truly,
Original Signed by

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CHEC Members

Centre Wellington Hydro	COLLUS PowerStream
Innisfil Hydro Distribution Systems	Lakefront Utilities
Lakeland Power Distribution	Midland Power Utility
Orangeville Hydro	Orillia Power
Parry Sound Power	Rideau St. Lawrence Distribution
Wasaga Distribution	Wellington North Power
West Coast Huron Energy	

ATTACHMENT A
To Letter Dated August 22, 2013

Intervenor Status:

Question 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?

In general, CHEC's view is that there is a need to tighten the eligibility criteria for those individuals seeking intervenor status. Factors for consideration are representation and independence.

The primary factor that the Board should consider is whether or not an intervenor is representing constituents contained within the service territory of the participating party(ies). Much like utilities are required to demonstrate customer engagement, intervenors should also have to demonstrate that they have engaged the constituents they are representing and have their best interests at hand. In this sense, there would be strong, formal, evidence that the intervenor is adding value to the outcome. Where an intervenor wishes to participate and add value to a proceeding but does not have represented constituents in the service territory, costs should be borne by the intervenor or the constituents the intervenor represents.

Of equal concern is an intervenor's independence. The intervenor process's primary function is to protect their constituent's rights and therefore all intervenors should have an independent and impartial view of the evidence being presented. For example, in certain instances, intervenors may rely on third-party consultants for expert opinion. A conflict of interest would occur if those same consultants also provide consulting services to one of the party(ies) involved in the proceeding, including the applicant and Board Staff. Instances where there is a conflict of interest or where independence cannot be demonstrated, an intervenor should not be permitted to participate in the proceeding.

Question 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?

Before intervenor status is granted (except for customers of the applicant), intervenors should have to demonstrate that they are knowledgeable on the material presented, that they can add value to the proceeding at hand, and that they represent constituents contained within the same service territory. Past history of participation in the intervenor process does not necessarily imply that an intervenor can contribute to any and all proceedings. In this sense, an intervenors area of expertise is applied where it can be most beneficial to the proceeding at hand.

Cost Eligibility:

Question 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?

Factors here are the same as in question 1 under "Intervenor Status". Intervenors should have to prove they have a "substantial interest" in a particular proceeding, and that there is no conflict of interest related to the matter at hand.

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

In order to ensure a party primarily represents a public interest relevant to the Board's mandate, the Board should have documented proof that a party is actually acting on behalf of a specific group of constituents. This would entail having the represented group provide formal documentation to that effect. Currently, intervenors can sign off in a settlement conference without consulting anyone. Formal documentation of representation involves the constituents in the process and outcomes achieved are validated based on the interests being represented. This documentation would require updating on a periodic basis (i.e.: annually) to ensure the represented group is maintaining their position of having their interests represented at formal proceedings.

Question 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)?

The current regulatory process has seen repetition of work from one file to another without sufficient oversight by the intervenor filing. Examples have been stated whereby intervenors have simply done a "cut and paste" from one LDC's application to another, often without changing the name of the utility. This implies a "cookie cutter" approach to rate application review, which allows intervenors to achieve maximum compensation for minimal effort.

The electricity industry is a relatively close knit industry where intervenors are familiar with Board Staff as well as with each other. Because of this, intervenors should be required to collaborate rather than act independently of one another. Collaboration will help to avoid duplication of effort (having different intervenors with different areas of expertise focus on specific areas of an application) and improve efficiencies (including reducing costs) in the interrogatory process. Furthermore, intervenors should also have to prove the validity of the intervention. The Board should disallow costs where evidence of "cookie cutter" or other similar methodologies has been used. Intervenors are much like financial auditors in the

sense that they are there to provide assurance on the evidence provided, not manage the numbers. They should therefore be compensated for providing value to the process, not for simply challenging the process with a standardized interrogatory, which requires the same response from each applicant.

Perhaps the Board should consider having Board Staff take on the role of facilitator. As facilitator, Board Staff would be responsible for reviewing, consolidating and submitting a single cohesive and comprehensive interrogatory list to the applicant(s). This would reduce needless duplication of effort while at the same time address materiality concerns. Evidence of intervenor collaboration has been seen in technical conferences but needs to be extended to other areas such as settlement conferences and oral hearings.

Question 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?

Intervenor costs tend to be unreasonably high and are currently not equitable to all customer classes. In this sense, intervenors tend to focus on the residential class of customers with less attention on the General Service and other classes. Other approaches should be considered.

One potential solution would be to hold the intervenors accountable to their constituents by having the represented parties responsible for the costs of the intervenor services. A cap on cost awards would be an alternate consideration that improves that quality of intervenors requests towards focusing on the material, not minor issues. Consideration should also be given to capping proceedings such as an IRM application, at a lower magnitude than a Cost of Service application. At the very least there should be approaches that allow for more predictability of intervenor costs as well as an opportunity for utilities to challenge costs on behalf of the ratepayer.

<u>Recommended Modifications:</u>

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

CHEC has no comment at this time.

Other Comments:

Other suggestions for improving the intervenor framework are as follows:

In order for the intervenor process to be effective, the Board needs to standardize on one singular, consistent, methodology when intervenors participate in Board proceedings. Doing so will ultimately lead to a more efficient and cost effective process. Alternatively, the Board should consider the potential of other models such as the consumer advocate, consumer challenge group, or consumer panel models. Each of these models has merits that could be incorporated into the current intervenor process or could be considered as an alternate, stand-alone solution.

The Board also needs to consider whether the current system epitomizes "intervenors" representing a defined constituent, or industry expertise paid through the intervenor process. A review of proceedings will clearly indicate the same experts are in attendance at many proceedings and what appears, through settlement conferences, to be a high degree of Board dependence on these representatives to reach agreement with the applicants. Perhaps there is a more cost effective manner to manage this expertise and avoid duplication of evidence through a system that is based on cost control rather than cost award. In this sense, cost awards would be based on specific criteria such as thresholds, accountability and need. Maximum compensation thresholds could be determined from the onset to ensure time is not spent frivolously and to ensure duplication of effort is minimized. Intervenors should be held accountable for their actions whereby compensation for their participation in Board proceedings is directly related to the quality of their contribution, the efficiency in executing their responsibilities and value added to the outcome. Furthermore, intervenors should also be required to demonstrate a need to for compensation. This would require disclosure of any financial assistance they may receive in connection with participation on Board proceedings. Intervenors that have failed to meet the necessary criteria would incur reduced cost awards or no cost awards at all.

The Board, as a regulator, has a responsibility to ensure that public interest is served. However, the current interrogatory system represents a methodology that the average constituent would be challenged to understand. The complexity of this methodology needs to become more transparent in order to ensure a wider scope of "public interests" can participate at Board proceedings

Prior to de-regulation (or re-regulation), distributors were accountable directly to their customers. Recent Board initiatives focus on customer engagement, expectations and input. This direction is supported, however, rather than becoming an additional requirement such engagement should help to offset regulatory cost attached to the process. Consideration should be given to an approach which recognizes distributors who engage the local community. The Board could then ensure specific benchmarks are met prior to rate approval. Such an approach, albeit with some refinement, would ensure a customer focused approach, which is consistent with the Board's recent regulatory framework initiatives.