



# **Ontario Energy Board Commission de l'énergie de l'Ontario**

**Framework Governing the Participation of  
Intervenors in Board Proceedings**

**(EB-2013-0301)**

**STAKEHOLDER CONFERENCE**

**October 8, 2013**

## **Vulnerable Energy Consumers Coalition**

**Michael Janigan**



# Framework for Governing Intervenor Participation (EB-2013-0301)

Stakeholder Consultation

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Submitted on Sept 30/13 for Presentation on Oct 8/13

# Public Interest

- Those in pursuit of the Public Interest:
  - Board
  - Board staff
  - Utilities
  - Stakeholders
- Public Interest = sum(Private Interests)
- OEB discerns through adjudicative and policy proceedings, aided by participants



# Public Interest

- OEB discerns in adjudicative and policy proceedings
- OEB aided by Applicant, Intervenor and Staff
- Regulatory Compact
- “Regulation as a Collaborative Enterprise” – Tony Prosser
- Engagement: inclusive, advanced, continual



# Substantial Interest

- Constituents – Have it
  - Advocates – Represent it
  - *Amici* – Aid in understanding it
- 
- Constituent – e.g. Ford Motor Company
  - Advocate – e.g. AMPCO
  - *Amici* – e.g. Energy Probe



# Substantial Interest

1. “What substantial interest does this stakeholder have to warrant standing in the proceeding?”
2. “How can this stakeholder be effectively engaged and their perspective efficiently incorporated into the Board’s process of making an adjudicative or policy decision in the public interest?”



# Intervenors in Context

- Effectiveness of regulation requires stakeholders as Intervenors to:
  - articulate their private interests
  - share perspectives on other private interests
- Efficiency of regulation requires that Intervenors:
  - Not incur costs disproportionate to their role
  - Not create undue costs for the Board or Applicant



Latter point subject of a separate policy proceeding on OEB procedures.





# Intervenor Status and Cost Eligibility

- Premise: Stakeholders participating as Intervenor is desirable
- Status – *de jure* participation
- Cost Eligibility – *de facto* participation
- Cost Awards – Focal point for balancing effectiveness with efficiency



# Cost Award Caps

- Feasible for the Board to “put a price” on adjudicative and policy proceedings
- Currently “stage-by-stage; hours per Intervenor” caps in many policy proceedings
- This or other models could be implemented in all proceedings
- Extraordinary, unanticipated reasons to adjust caps could be raised by motion



# Cost Award Cap Considerations

- Set based on budgets vs. by generic policy
- Set at outset vs. set stage-by-stage
- Cap for entire proceeding vs. stage-by-stage
- Set for Intervenorors individually vs. in groups
- Set for groups based on Intervenor type, rate class, etc.
- Allocate among groups by Intervenor type, customer mix, etc.



# Cost Award Cap Models

Cap by individual Intervenor and by Intervenor type	Total Revenue Requirement: \$50M <b>All Intervenors</b> Total Cost Award Cap: 0.2% or \$100,000
Jane Doe	\$500
Bocce Club of Windsor	\$500
City of Windsor	\$500
Ford Motor Company	\$500
AMPCO	\$24,000
SEC	\$24,000
Energy Probe	\$24,000
VECC	\$24,000
EDA	<u>\$2,000</u>
Total	\$100,000

# Cost Award Cap Models

Cap by Intervenor rate class and by customer mix	Total Revenue Requirement: \$75M All Intervenor Total Cost Award Cap: 0.2% or \$150,000
Residential	\$50,000
GS < 50 kW	\$50,000
GS 50-5,000 kW	\$25,000
Large Use	\$10,000
Street Lighting	\$5,000
USL	\$2,500
Generators	\$2,500
Utility-side	<u>\$5,000</u>
Total	\$150,000

# Cost Award Cap Models

Cap by Intervenor type and split consumer/utility sides	Total Revenue Requirement: \$100M All Intervenor Total Cost Award Cap: 0.2% or \$200,000	
	Consumer-side Intervenor Cap: 90% of Total Cap	Utility-side Intervenor Cap: 10% of Total Cap
Constituents	\$18,000	\$4,000
Advocates	\$72,000	\$14,000
<i>Amici</i>	<u>\$90,000</u>	<u>\$2,000</u>
Subtotals	\$180,000	\$20,000
Total	\$200,000	

# Thoughts on Caps

- Once designed, total cost award caps and other sub-caps provide greater certainty:
  - Board – Efficiently compensating stakeholders for enhancing regulatory effectiveness
  - Intervenors – Reduce after-the-fact applicant challenges to cost awards in respect of sunk costs
  - Utilities – Full cost award certainty allows for full cost recovery in adjudicative proceedings and reasonable limits on costs borne by ratepayers



# Next Steps

- Many alternatives to be identified and evaluated in structuring cost award caps
- Best alternatives will protect and promote effectiveness and efficiency of regulation
- Establish and assign to a Working Group
- Concurrently proceed with Phase 2
- Working Group Report and Phase 2 material may provide alternative visions for discussion





# GAPLO/LCSA

EB-2013-0301

Stakeholder Conference – October 8, 2013

# Intervenor Status

23.02

The person applying for intervenor status must satisfy the Board that he or she has a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by crossexamining a witness.

23.03 Every letter of intervention shall contain the following information:

- (a) a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention;
- (b) subject to **Rule 23.04**, a concise statement of the nature and scope of the intervenor's intended participation;

## 3.2 AFFECTED PARTIES

Landowners, whose property will be encroached upon by pipeline, station or well drilling construction, are directly affected by the disturbances created by construction, operation and maintenance of pipelines and related facilities. Consequently, their involvement in the planning of the route or site on their property is essential. Such persons are referred to as "directly affected landowners".

- OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 6<sup>th</sup> Ed., 2011, at p. 17.

## 3.2 AFFECTED PARTIES

Other landowners whose property lies adjacent to, or close to a proposed pipeline or designated gas storage area, may be affected by proposed construction activities due to noise, dust, and impediment to traffic flows, or the operation of a nearby facility such as a compressor station. In addition, there may be landowners who are restricted from building structures in proximity to certain facilities. Since the intent of the Guidelines is to encourage consultation, these landowners should also be involved in the planning of the route or site adjacent to their property. Such landowners will be referred to as "indirectly affected landowners".

- OEB Environmental Guidelines for the Location, Construction and Operation of Hydrocarbon Pipelines and Facilities in Ontario, 6<sup>th</sup> Ed., 2011, at p. 17.

# NOTICE OF APPLICATION AND HEARING

## How to Participate

You may request intervenor status if you wish to actively participate in the proceeding. Your request must be made by letter of intervention received no later than **10 days** from the publication date of this notice, or, if you have been served personally, no later than **10 days** from the date of service.

## **Rule 21. Notice**

21.01 Any notices required by these Rules or a Board order shall be given in writing, unless the Board directs otherwise.

21.02 The Board may direct a party to give notice of a proceeding or hearing to any person or class of persons, and the Board may direct the method of providing the notice.

**21.02.1 An applicant shall give notice of a proceeding or hearing to a person with an interest in land that is affected by the application being considered in the proceeding or hearing.**

21.03 Where a party has been directed to serve a notice under this Rule, the party shall file an affidavit or statement of service that indicates how, when, and to whom service was made.



## **Rule 23. Intervenor Status**

**23.01** Subject to **Rules 23.05** and except as otherwise provided in a notice or procedural order issued by the Board, a person who wishes to actively participate in the proceeding shall apply for intervenor status by filing and serving a letter of intervention by the date provided in the notice of the proceeding.

## Rule 23. Intervenor Status

23.01.1 Notwithstanding Rule 23.01, a person with an interest in land that is affected by the proceeding shall not be required to apply for intervenor status and shall be deemed to be an intervenor in the proceeding unless such person notifies the Board in writing that he or she waives his or her intervenor status.

# Cost Eligibility

### 3. COST ELIGIBILITY

3.03 A party in a Board process is eligible to apply for a cost award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services;
- (b) primarily represents a public interest relevant to the Board's mandate; or
- (c) is a person with an interest in land that is affected by the process.

3.04 In making a determination whether a party is eligible or ineligible, the Board may also consider any other factor the Board considers to be relevant to the public interest.

“In this proceeding, our group asked for and received a cost eligibility order from the Board that gave us the confidence needed to get involved in a regulatory proceeding that would directly affect our interests. This is not our application and we do not stand to profit from the sale of the St. Clair line in the way Union Gas and the participants in Dawn Gateway LP stand to profit. Therefore, the availability of cost awards to cover our costs of participating in the Board process is extremely important to us.”

- GAPLO–Union (Dawn Gateway), Written Evidence Statement, EB-2008-0411, at para. 33.

“Transfer to the NEB jurisdiction will put landowners at a severe disadvantage when it comes to responding to company applications. The OEB has in place a cost recovery mechanism that recognizes that directly affected landowners, whose lands have been encumbered with easements taken by expropriation or by agreement under threat of expropriation, may have concerns that should be addressed in the consideration of a company application. With the exception of the detailed route hearing process, the NEB has no such mechanism.”

- GAPLO–Union (Dawn Gateway), Written Evidence Statement, EB-2008-0411, at para. 33.

“With respect to the landowners along the St. Clair Line, the Board concludes that there would be some harm to landowners arising from the proposed transaction. This harm relates to the greater restrictions placed on land use, the extended scope of land affected, and the limited ability to recover regulatory costs.”

- OEB Decision dated November 27, 2009, EB-2008-0411, Application for leave to sell by Union Gas Limited, at para. 142.

“The Board expects that further negotiation will be required and will therefore also require that Union compensate landowners for their reasonably incurred costs for negotiating a final blanket approval which is acceptable to the parties and the NEB. The landowners will submit their cost claim to the OEB as part of this proceeding.”

- OEB Decision dated November 27, 2009, EB-2008-0411, Application for leave to sell by Union Gas Limited, at para. 146.



## Rule 41. Cost Eligibility and Awards

41.01 Any person may apply to the Board for eligibility to receive cost awards in Board proceedings in accordance with the *Practice Directions*.

41.01.1 A person is eligible to receive a cost award in any Board proceeding in which he or she is deemed to be in an intervenor under Rule 23.01.1 and is not required to apply for eligibility under Rule 41.01.

## Rule 41. Cost Eligibility and Awards

41.02 Any person in a proceeding whom the Board has determined to be eligible for cost awards under Rule 41.01 or a person in a proceeding eligible for cost awards under Rule 41.01.1 may apply for costs in the proceeding in accordance with the *Practice Directions*.

Submitted to the Ontario Energy Board on behalf of the **Gas Pipeline Landowners of Ontario (GAPLO)** and the **Lambton County Storage Association (LCSA)**.

October 8, 2013

## Electricity Distributors Association

**Alan Mark**

**Nishnawbe Aski Nation**

**Doug Cunningham**

## Building Owners and Managers Association

**Thomas Brett**

# **Review of the Framework Governing the Participation of Intervenorors in Ontario Energy Board Proceedings (EB-2013-0301)**



- Intervenorors play an important role
  - Rates & Facilities Applications
  - Settlement Conferences
  - Consultative processes
- Potential areas for improvement:
  - Reduce duplication / overlap among interests
  - Ensure informed representation of constituencies
  - Responsible participation



- Q1 – Factors to consider for Intervenor Status
  - Representation of impacted constituency
  - Plan for instruction and direction
  - Non-duplication of constituent interests
  
- Q2 – Conditions for Intervenor Status
  - Impact on constituency
  - Intervenors should work together to avoid duplication
  - Intervenors with similar constituencies should work together

- Q1 – Determining representation of direct interest of consumers
  - How constituency is impacted
  - How instruction will be provided
  - Whether constituency is not already otherwise represented
- Q2 – Determining representation of a relevant public interest
  - Relevant to the Board's mandate
  - Instruction from constituency
  - The interest is not already otherwise represented

- Q3 – Determining Eligibility for Costs

- Current approach works, however, Board should consider enhancements to review of Cost Award requests

- Q4 – Administering Cost Awards

- Not necessary to pre set budget expectations

- Recommended Process improvements:

- Board should more stringently enforce existing rules for granting intervenor status and cost awards

- Board staff, or another representative, should play a greater role in commenting on intervention requests and cost award submissions

- Reward efficiency of representation

- Not necessary to pre set budget expectations

# ***CFIB Comments Related to First Phase – Review of the Board’s Current Approach***

*Review of Framework Governing the Participation of  
Intervenors in Board Proceedings*

October 8, 2013

Board File No. EB-2013-0301

# Introduction to CFIB

- ▶ A not-for profit group representing the interests of small business at all levels of government
- ▶ 109,000 members across Canada
- ▶ All industry sectors
- ▶ All regions of Canada
- ▶ Business size from one to hundreds of employees

**CFIB advocates and  
Informs Members  
on a Broad Range of  
Issues**

- ▶ *Employment*
- ▶ *Taxation*
- ▶ *EI premiums*
- ▶ *Energy costs*
- ▶ *Credit card fees*
- ▶ *Business  
management*

## CFIB's Ontario Members

- ▶ 42,000 members
- ▶ Located throughout Ontario, therefore customers of many of the electricity and natural gas distributors regulated by the OEB
- ▶ Sectors include agriculture, natural resources, construction, manufacturing, wholesale, retail, transportation, arts, information, finance, insurance, real estate, professional services, admin support, social services, hospitality, among others.

# Some Examples of Our Ontario Energy Sector Advocacy

- ▶ 2010 – met with the Minister about Ontario's Long-Term Energy Plan
- ▶ 2011 – supported LDCs with concerns about General Service TOU implementation
- ▶ 2012 – letter to Minister of commenting on Industrial Electricity Incentive
- ▶ 2010- 2012 - Pre-budget submissions with focus on energy issues
- ▶ 2012 – participated in OEB's RRFE consultations
- ▶ 2013 – participated in OEB consultations regarding electricity distributor efficiency

# Small Business Concerns about Energy

- ▶ CFIB surveys members regularly to determine their key concerns
  - ▶ *Energy tops the list of business inputs creating challenges for small firms*
  - ▶ *92% say they have no ability to shift electricity consumption away from peak periods*
  - ▶ *Aspect of energy purchasing rated most important by small businesses was price stability*
- ▶ Participation in OEB processes can give CFIB and its members a chance to influence regulatory decisions on issues of policy and the setting of rates.



## Consultation by Intervenor with its Constituency

- ▶ CFIB regularly surveys members to learn about their views and interests.
- ▶ CFIB supports a requirement for high level consultations by intervenors with their constituencies

# Management of Participation by Legal Counsel and Experts

Legal Counsel and Experts	CFIB
Makes proposals as to what applications and consultations to participate in	Decides and gives approval, based on the interest of members
Prepares documents to be filed in CFIB's name	Has final authority to approve any document to be filed
Participates based on CFIB member concerns and issues	Reviews and explains members' concerns to counsel and experts
Manages day to day participation in the proceeding; requests direction on important issues	Delegates day to day decisions, provides direction on important issues

# Public Interest Parties

- ▶ i.e. intervenors that do not represent a specific constituency *of consumers/ratepayers*
- ▶ Should be required to demonstrate involvement in the public interest issue that goes beyond activities funded through OEB cost awards
  - ▶ *Mission or vision statement related to the issue*
  - ▶ *Evidence of activities or appearances in other forums related to the issue*

# Requirement for Similarly Situated Intervenorors to Combine

- ▶ We respect the need to control costs
- ▶ Not always a clear and consistent commonality of interest
- ▶ Important for all parties to have a full mandate to consider and give input on all the issues they consider relevant
- ▶ Support processes to reduce duplication of interrogatories, allow time for parties to review one another's submissions

# Budgets and Limits on Costs

- ▶ Should be explored, supported by collection of data
- ▶ Look for consistency in level of effort in different hearing activities, to determine how well it can be forecast
- ▶ Need a process to consider and approve additional funding in response to changes in scope of the work

# Proposed Modification in Rules of Practice

- ▶ Change language to define interest in terms of using or consuming the service, rather than in terms of paying rates directly
- ▶ Ensure that consumers whose energy costs are included in rent can be involved

# Effect of Increased Requirement of LDCs to Consult with Consumers

- ▶ CFIB supports the need for consultation
- ▶ *Consultation* does not guarantee that the input of any specific individual or group will be incorporated into the LDC's final proposals to the OEB
- ▶ Stakeholders must have the opportunity to submit their views directly to the OEB, and have the OEB make the decision.

## Summary

- ▶ Small and medium businesses are a very important constituency that should be represented in OEB proceedings and policy-making consultations
- ▶ CFIB can represent that constituency as long as the rules allow meaningful participation and fair consideration of the ideas offered
- ▶ CFIB consults with members
- ▶ CFIB could not obtain the needed services of legal counsel and experts without access to funding



# SUMMARY OF POSITION OF LARGE DISTRIBUTORS EB-2013-0301

Stakeholder Conference  
October 8, 2013

# Who we Are



- ❑ Enersource Hydro Mississauga Inc.
- ❑ Horizon Utilities Corporation
- ❑ Hydro Ottawa Limited
- ❑ PowerStream Inc.
- ❑ Veridian Connections inc.

# Modifications to Current Process

## □ Intervenor Status

- ▣ Intervenor to identify their “Substantial interest in a significant issue or issues”
- ▣ Intervenor not required to provide evidence of authorization to represent a group or class of stakeholders

# Modifications to Current Process

## □ Cost Eligibility

- Intervenor seeking costs for participation must show evidence of engagement in any stakeholder consultation provided by the applicant, if provided
- Intervenor seeking costs for participation should be required to submit a budget of their participation
  - Budget must recognize that experienced counsel and consultants (receiving top hourly rates) should have less hours than inexperienced counsel and consultants

# Modifications to Current Process

## □ Cost Awards

- Costs awards will be granted based upon the principles of section 5.01
- In addition, intervenors must provide evidence
  1. to show they actively participated in any pre-filing stakeholder engagement, if provided
  2. The claimed costs are focused on the substantial issues they identified during the request stage
  3. Their contribution offered a unique viewpoint (no repeating of positions of other parties)
  4. Taking proactive measures to avoid duplication
  5. That the time claimed was within the pre-filed budget

# Modifications to Current Process

## □ Cost Awards

### ▣ Revenue Requirement portion of Rate Proceeding

- Board Staff to provide first set of interrogatories
- Intervenors to allocate issues amongst intervenors
  - Lead intervenor only party to submit interrogatories/technical conference questions and conduct cross examination
  - Lead intervenor only party to submit argument on issues assigned to them
  - Only lead intervenor can claim costs on issue

# Modifications to Current Process

## □ Role of Board Staff

- Role must be clearly defined
  - a) Act as advisors to Board
  - b) Act as intervenor
- LD is not opposed to Board Staff acting as intervenor provided
  - Role is intervenor of public interest
  - Actively participate in settlement conference
  - Submit argument to address issue of other members of public interest not participating in regulatory process



# **Review of Intervenor Framework**

**EB-2013-0301**

October 8, 2013



# Participation of Intervenorors

- AMPCO's approach to regulatory interventions
  - Distinguish between direct effects of applications and indirect effects of policy
  - Limit approach to target members' key issues of cost, reliability, power quality
  - Support oversight by Board of Directors with in-house and external resources
  - Outsource project management, technical expertise, legal counsel
  - Manage resource commitments in relation to expectations for cost recovery
- Intervenor Role
  - Promote efficiency, protect interests of consumers
  - Focus on outcomes, emphasis on key issues
  - Collaborate with other intervenors where possible
- Board's Rules of Practice and Procedure
  - Set out processes, obligations for intervenors
  - Provide authority to grant/not grant intervenor status, award costs
  - Board has wide discretion to proscribe roles for intervenors
- Materiality of review
  - Are costs of intervenor funding reasonable?
  - 2012/13 fiscal year, 38 intervenors: \$5.5 million in cost awards

# AMPCO members

## Industrial power consumers in Ontario

- Resource-based, energy-intensive, value-added
- Export-oriented, trade-exposed
- Forestry, chemical, mining and minerals, steel, petroleum products, cement, automotive, industrial gases, manufacturing

## Leaders in energy management

- 18.5 terawatt-hours per year
  - 15% of annual Ontario energy consumption
- 2100 megawatts average demand
  - 10% of Ontario demand during system peaks
  - 854 MW (40%) demand reduction during hottest peak day on July 21 2011; 932 MW on hottest July day in 2012
- Electricity expenditures >\$1.5 billion/a

## Leaders in conservation

- Dispatchable Load
- Demand Response
- Industrial Accelerator

Air Liquide	Lanxess
Air Products Canada	MRRM Inc. – Dainty Foods Division
Arcelor Mittal Dofasco	NOVA Chemicals
Atlantic Packaging Products	Novelis Specialty
Atlas Tube	Pan Abrasive
Cameco	Praxair
Cascades	Resolute Forest Product
Canadian Gypsum Corporation	Saint-Gobain Ceramics
CF Industries	Shell Canada
Enbridge Pipelines	Sifto Canada
Essar Steel	St. Marys Cement
Essroc Canada	Suncor Energy
Ford Motor	Tembec
Gerdau	The Canadian Salt Company
Goldcorp	US Steel Canada
Goodyear	Vale
Hamilton Specialty Bar	Washington Mills Electro Minerals
Holcim Canada	Wecast Industries
Imperial Oil	Xstrata Canada
INVISTA Canada	
Irving Tissue	
Ivaco Rolling Mills	
Kimberly-Clark Inc	
Lafarge Canada	

## PLENARY SESSION

