PALIARE ROLAND
BARRISTERS

Richard P. Stephenson
T 416.646.4325 Asst 416.646.7417
F 416.646.4301
E richard.stephenson@paliareroland.com
www.paliareroland.com

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File 22234

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

Dear Ms. Walli:

Re: Review of Framework Governing the Participation of Intervenors in Board Proceedings Consultation and Stakeholder Conference (EB-2013-0301)

Please accept this correspondence as the PWU's "Further Comments" pursuant to the Board's letter dated August 22, 2013.

The PWU reiterates the comments contained in my correspondence to the Board dated September 27th, 2013, together with my oral comments as set out in the transcript of the Stakeholder Conference on October 8, 2013.

The PWU seeks to make one further comment. As indicated in my comments at the Stakeholder Conference, the PWU does not accept that the OEB's traditional intervenors, and in particular, those intervenors who typically are active in electricity cases, represent or constitute a meaningful proxy for the "public interest". It is the PWU's observation that this group of intervenors, even viewed as a collective, has an inordinate focus on short-term rate minimization. This focus continues to be apparent, even from the submissions made by these intervenors in the course of this consultation. The primary justification for the maintenance of the status quo has been the intervenors track record of success in reducing the revenue requirement of regulated utilities (relative to the applied for revenue requirements).

The PWU cannot be overly critical of these intervenors. It is not surprising that customers want to minimize the rates they pay. However, the Board can and must have a broader focus. It has a broader range of statutory objectives. Ultimately, it is responsible for the sustainability of the electricity and gas system, with a longer term focus which includes safety, reliability, and quality of service. As a result, any modifications to the process of intervenor involvement and funding must adopt one of two approaches:

1. The intervenor status and funding model must be modified to ensure that the OEB attracts and funds a more diverse group of intervenors who, in aggregate, are more representative of the public interest mandate of the Board; or,

2. If the composition of the intervenor group is to remain unchanged, the Board must seek out assistance and input from other entities that will give the Board a more complete perspective, matching its public interest mandate. One means by which this could be achieved is an expanded role from a more active and assertive Board staff.

The need to address the Board's public interest mandate in its entirety has an additional dimension relevant to the Board's consideration. The PWU is aware of the Board's desire to encourage the use of settlement conferences to attempt to resolve cases short of hearings. The reasons for the Board's receptiveness to negotiated settlements are obvious. Negotiated settlements are often better than litigated settlements, since they are acceptable to the parties most directly affected by them. Moreover, negotiated settlements are much less demanding of scarce Board resources.

On the other hand, the Board must be cautious about the dangers and limitations associated with negotiated settlements. In the PWU's experience, settlement conferences are typically dominated by utilities horse-trading with intervenors over revenue requirement. This arrangement suits the needs of both the utilities and the intervenors. The utilities obtain the settlement they desire, thereby eliminating the expense and uncertainty associated with a Board hearing. The intervenors' desire for short-term minimization is satisfied. What is missing, however, is any meaningful review or demonstration that the Board's broader public interest objectives are being achieved.

The problems associated with settlement agreements are exacerbated in the world of multi-year IRM. Under IRM, in-period adjustments are made on a formulaic basis. One of the purposes of IRM is to minimize Board intervention during the IRM term. However, the PWU submits that the *quid pro quo* must be a comprehensive review by the Board at the time of rebasing. The PWU suggests that it will very rarely be appropriate for rebasing applications to be resolved by way of a settlement agreement. Given the intermittency of these reviews, the Board cannot assume that its statutory public interest mandate can be discharged by relying upon agreements emerging from the ADR room.

We trust these submissions are of assistance to the Board.

Yours very truly,
PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson
RPS:jr

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