

October 16, 2013

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
27<sup>th</sup> Floor  
2300 Yonge Street  
Toronto, ON M4P 1E4

*Via website and by courier*

Dear Ms. Walli:

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

The Electricity Distributors Association (EDA) is the voice of Ontario's 75 local distribution companies (LDCs), or electricity utilities, the publicly and privately owned companies that safely and reliably deliver electricity to all Ontarians through 4.8 million homes, businesses, and public institutions.

This submission is to clarify and supplement some of the EDA's recommendations made in its earlier submission of September 27, 2013 on this subject and should be read in conjunction with the original submission.

***Interevenor status and eligibility for cost awards***

The Board's current policy is that parties representing the "public interest" are eligible for cost awards, and parties representing some other interest are not. The Board has presumptively determined that certain classes of parties are not associated with the public interest and are not eligible for cost awards, including the EDA. There was no disagreement with our position at the stakeholder conference that an association such as the EDA should be eligible for cost awards. Energy Probe supports our contention that the current eligibility rules impose illogical and difficult-to-apply presumptive criteria for exclusion.

The current rules don't sufficiently recognize the value of an intervenor's contribution to the Board and the public interest. The Board should be encouraging, not discouraging, intervenors

who regularly are of assistance to the Board. The realities of cost pressures on all parties mean that the unavailability of cost awards may hamper and discourage responsible and valuable interventions. Also, the EDA may not have budget for a Board proceeding that it didn't know about when the association's budget and the membership dues are set. In fact, the Board proceedings often commence after the association's budget and dues are set. Lack of budget often discourages the EDA to take part in Board proceedings. We therefore urge the Board to encourage participation of associations including the EDA in the proceedings of the Board as long as the proceeding engages the interests of an association's members and a collective intervention would be of assistance to the Board.

We recommend a more flexible regime that would permit the Board to grant cost eligibility when it is in the public interest to do so and to withhold eligibility in cases when it is not. Inflexible presumptions benefit neither the Board nor the public interest.

Although we are seeking extension of current rules to permit intervention and cost awards to all parties who would be of assistance to the Board, we believe that there is rationale for requiring some greater controls on interventions. Undoubtedly, there are efficiencies to be achieved by reviewing the intervenor process as some intervenors acknowledged at the stakeholder conference.

### ***Towards a more efficient intervenor process***

The Board staff should take a leadership role and identify potential issues in utility rate applications and issue the first round of interrogatories. Intervenors should be expected to review Board staff interrogatories and only then raise their own interrogatories without duplicating the staff effort. Intervenors should be expected to share the work load by dividing responsibilities for the issues. Also, different parties representing common consumer interests should be expected to combine their interventions on issues relating to the revenue requirement. However, if some intervenors want to go out on their own because of specific reasons, then they have to demonstrate that they have some unique issues which are not common with other intervenors in that proceeding.

If intervenors as a group agree to a common solution on various issues in a proceeding, then they should demonstrate that they have worked together by reducing the total cost claims. One intervenor cannot adopt what some other intervenor has said and then claim costs as well.

Currently, there is some duplication in the interrogatory process. We think the interrogatory process can be improved by making intervenors accountable to think and focus on asking questions that are really required to make their case. This can be achieved by having either caps on cost awards or establishing pre-determined budgets for rate proceedings.

The cap would be based on the anticipated effort required, which can be determined based on the Board's experience of reviewing several different rate applications over a number of years. This would encourage intervenors to focus on issues that are material and help ensure that cost

awards are better balanced with the benefits they provide. Caps have the benefit of administrative simplicity, predictability and universality.

The Board could also adopt an approach that provides for pre-approved intervenor budgets, and pre-established amounts for each hearing activity in rate applications. This approach would permit insights and critical examination of the purpose of the intervention and what the money will be spent on.

Either caps (on cost awards) or budgets (pre-approved budgets) or a combination of both would work well to achieve efficiencies in the intervenor process. The Board could choose one of them depending on its objectives.

### ***Recommendations***

In addition to our recommendations on cost eligibility, the EDA's other key recommendations are reiterated below:

- The Board's "Rules and Practice Direction" should be changed to eliminate the presumptive disqualifying factors that make a party ineligible for cost awards.
- Revise eligibility rules for Intervenor status in rate applications. The party seeking intervenor status must demonstrate to the Board that:
  - it has consulted with the constituency that it represents;
  - it has received a specific mandate from that constituency to intervene in the rate hearing; and,
  - there is a governance regime in place relating to instruction to and participation of its legal counsel and other representatives in the application proceeding.
- Reduce duplication of effort between Board staff and intervenors in the application process by ensuring that:
  - Board staff takes a leadership role, issues the first round of interrogatories, and takes positions on issues, particularly in settlement conferences;
  - intervenors raise their own interrogatories without duplicating Board staff effort;
  - intervenors share the work load, by dividing responsibilities for different issues in the application;
  - Board staff screens interrogatories from intervenors for duplication and relevance before sending them to the applicant.
- Establish either a cap on cost awards or adopt an approach that provides for pre-approved intervenor budgets, and pre-established amounts for each hearing activity in rate applications or a combination of both. This would ensure that costs and benefits to customers are balanced.

The EDA would like to thank the Board for giving the opportunity to provide comments on this important initiative.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Teresa Sarkesian". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Teresa Sarkesian  
Vice President, Policy and Government Affairs  
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