

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act*, 1998, S.O. 1998, c. 5, Sch. B, as amended;

AND IN THE MATTER OF a consultation to review the framework governing the participation of intervenors in Board proceedings.

Industrial Gas Users Association (IGUA)

Written Comments

Rationale for this Consultation

1. Having reviewed and considered the Board's August 22, 2013 letter to interested parties announcing this process (Notice) and the initial written submissions filed by other participants in this process, and having attended and listened to the presentations and comments of interested parties at the October 8th Stakeholder Conference, IGUA remains puzzled at the particular concerns that have given rise to this Board initiated review of the role of intervenors in Board proceedings.
2. The Notice states that the objective of this review is:

"to determine whether there are ways in which the Board's approach to intervenors might be modified in order to better achieve the Board's statutory objectives".
3. The Notice does not specify which aspects of the Board's statutory objectives the Board feels might be better achieved, and it is thus difficult for stakeholders to opine on whether, and if so how, the Board's approach to intervenors might contribute to such achievement.

4. In the Notice the Board notes 3 more specific reasons for the appropriateness of its review of the role of intervenors in Board proceedings at this time.
5. First, the Board notes that in implementing a new approach to the regulation of electricity distributors, it will place a strong emphasis on the need for each electricity distributor to engage with a broad range of customers and other stakeholders during the development of the capital and operational plans reflected in the distributor's rate application.
6. IGUA is an association of industrial companies located in the Canadian provinces of Manitoba, Ontario and Québec, who use natural gas in their industrial operations. As such, IGUA has little to add to the debate on the appropriate role of intervenors to the extent that such is specific to the Board's regulation of electricity distributors and other regulated entities in the electricity sector.
7. Generically, however, IGUA notes recent experience with both Enbridge Gas Distribution (EGD) and Union Gas Limited (Union) which has demonstrated that pre-application consultation by the regulated utility has in fact resulted in more efficient formal regulatory approval processes. In each case (for EGD in respect of its recent multi-year DSM plan and in Union's case in respect of its 2014-2018 rate plan) agreement among interested intervenors and the regulated utility resulted in filing of applications framed largely on consensus, necessitating only abbreviated regulatory processes that focussed on providing the Board with sufficient information to support a finding that the agreement advanced was in the public interest and produced just and reasonable rates. This pre-application consultative approach naturally resulted in a more efficient hearing process. No new rules or procedures were required in order to achieve this result.
8. Pre-application consultation is a self-correcting mechanism. The more balanced, transparent and robust the consultation, the more efficient will be the resulting regulatory process. (Conversely, a contested and involved regulatory process following a pre-filing consultation would indicate that the consultation was of

limited benefit, in the circumstances of the parties involved, the application, or both.)

9. The second specific reason that the Notice indicates that this review of the role of intervenors in Board processes is timely is the Board's review of its application and hearing process, with the goal of enhancing the efficiency and effectiveness of that process.
10. Caution should be exercised, however, in considering changes to one aspect of that broader application and hearing process in isolation. As noted by Dr. Rahbar speaking on behalf of IGUA at the October 8th Stakeholder Conference, IGUA does have concerns about aspects of the regulatory process, including: i) information asymmetry; ii) transparency, structure and accessibility of some regulatory filings; and iii) the process for intervenors to bring forward issues of concern to them. The framework governing the role of intervenors in the Board's regulatory proceedings does not seem to IGUA to be an area obviously in need of improvement. As noted above, the Board and its ultimate stakeholders, the public, get good value for the money spent on informed intervenor access and contribution to the energy regulatory process in Ontario.
11. The laudable qualities of this Board's framework for intervenor participation, as compared to some others, have been emphasized by others.¹ IGUA endorses those comments.
12. To be able to comment in an informed manner on the role of intervenors, within the context of a broader review of the Board's application and hearing processes, it would be beneficial to have a view both of the Board's consideration of regulatory practices in other jurisdictions, and of the metrics that illustrate how this Board fares in comparison to those in such other jurisdictions.
13. On the issue of intervenor costs in isolation, the Notice references the \$5.5 million awarded by the Board to 38 eligible intervenors during fiscal 2012-2013.

¹ SEC's Written Submissions, pg. 8.

14. Others² have presented analysis indicating that, in aggregate, the amount spent, by ratepayers through the rates of the regulated monopoly utilities, on intervenor representation of their interests is but a fraction of the billions of dollars in revenue requirement approved by the Board each year. To the extent that the Board is satisfied that the “*active and important role*”³ played by intervenors in Board proceedings contributes to setting rates that are just and reasonable, the value returned to ratepayers on this modest investment in effective intervenor participation is clear.
15. As was stated by APPrO in its written submissions and by the Nishnawbe Aski Nation during its oral submissions, this amount is “*immaterial in the context of the collective revenue requirement of 80+ electricity distributors, four electricity transmitters and three natural gas utilities*”.⁴
16. The third specific reason that the Notice indicates that this review of the role of intervenors in Board processes is timely is that the Board is also undertaking a review of the way in which it consults with stakeholders, including consumers, in the review and development of regulatory policy. The Notice indicates the Board’s anticipation of using consumer focus groups and surveys in appropriate circumstances in the policy development process.
17. While focus groups and consumer surveys may provide useful tools for the Board to gauge public sentiment on energy and utility issues, IGUA does not see such tools as in any way substitutable for detailed engagement of educated, experienced, and adequately resourced intervenor representatives.
18. Recognizing that nothing is perfect, and that there is always room for improvement, IGUA respectfully suggests that to the extent that the Board has additional concerns regarding specific elements of the framework governing the

² See for example the Written Submissions of SEC and LPMA, and the Written and Oral Submissions of VECC.

³ Notice, page 1, bottom.

⁴ Stakeholder Conference Transcript page 54, bottom; APPrO’s Written Submissions page 1, bottom through page 2, top.

participation of intervenors in Board proceedings, particularization of those concerns would allow that intervenors, regulated entities, and any other interested parties to most usefully consider the concerns and potential responses thereto.

19. The Board has both the tools to manage its processes, including the participation of intervenors in those processes, and the discretion to utilize those tools. While IGUA encourages the Board to continue to consider ways to more effectively utilize those tools (mandated hearing plans and case management conferences are two good, recent examples of potential innovations within the existing framework), IGUA does not see the need for any fundamental alteration to the existing framework or tool set.

Additional Comments

20. As the Board is aware, its cost award tariffs are below market. For IGUA and others similarly situated, this means that IGUA makes a substantial financial contribution to each intervention in which it engages. This results in a self-imposed discipline on both when IGUA intervenes, and on the scope of interventions when undertaken. When IGUA seeks to intervene in a proceeding before the Board, it does so because the issues raised in the application significantly impact all or a portion of its constituency. IGUA then ensures that its intervention focuses on those matters of direct interest to its members.
21. In contrast the regulated utilities (again focussed primarily on the gas distributors in whose proceedings IGUA generally engages) have relatively unlimited regulatory resources, and these too are funded by ratepayers (including IGUA's members). Absent a robust intervenor participation framework, the information asymmetry presented by this reality would be aggravated, to the detriment of the Board's processes and the quality of its decisions.

22. IGUA also notes that there are intervenors – environmental groups present a good example – who may not be able to demonstrate a direct financial contribution to external intervention costs by the constituency that they represent. IGUA has no concerns about this. Such groups represent another, and a different, aspect of the public interest which should be represented at the Board. An informed environmental interest with a track record in public advocacy can make an important contribution to the Board’s processes (in furtherance of some of the Board’s statutory objectives).
23. In addition to the contribution made by informed and resourced intervenors to the Board’s process, and the quality of its outcomes, an equally important role of public utility regulation is public acceptability of those outcomes.⁵ Streamlining regulatory processes in pursuit of “efficiency” (measured by lower costs or fewer hearing days) but at the expense of public acceptability of those processes is not good regulatory practice and is not in the interest of the public or the entities regulated.
24. To the extent that the Board is concerned with how to cost effectively process applications by very small electricity distributors (which is an example that came up during the Stakeholder Conference), then it should consider that particular circumstance further. That particular circumstance does not belie any fundamental flaw in the broader framework governing the role of intervenors in Ontario Energy Board proceedings.

⁵ See the comments of counsel for the EDA, Stakeholder Conference Transcript page 156, bottom through 158, top.

25. Should the Board determine it appropriate to proceed with a subsequent phase of this process, as indicated in the Notice, IGUA respectfully encourages the Board to provide greater transparency into the concerns driving this inquiry. This will allow IGUA and others to provide feedback of more direct assistance to the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:
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