EB-2013-0301

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sch. B, as amended;

AND IN THE MATTER OF a consultation by the Board with respect to the role of intervenors in Board proceedings

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REPLY SUBMISSIONS OF THE

SCHOOL ENERGY COALITION

October 16, 2013

JAY SHEPHERD P.C.
2300 Yonge Street, Suite 806
Toronto, Ontario M1P 3E5

Jay Shepherd
Tel: 416-483-3300
Cell: 416-804-2767
Fax: 416-483-3305
Email: jay.shepherd@canadianenergylawyers.com

Counsel for the School Energy Coalition

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1 OVERVIEW

1.1 ***Background***

1.1.1 On August 22, 2013, the Board initiated a consultation to review the participation of intervenors in Board proceedings. Submissions from 32 stakeholders were filed on or around September 27, 2013, and then a facilitated stakeholder conference was held on October 8, 2013 to allow an exchange of ideas and points of view.

1.1.2 These are the reply submissions of the School Energy Coalition, informed by the submissions of all parties in the first round, and by the discussion at the Stakeholder Conference.

1.1.3 SEC reiterates its basic principles and analysis in its submissions of September 27th. In these reply submissions we will only comment on the specific proposals made by various parties as to changes that could be made to the intervenor rules to improve the efficiency or effectiveness of the Board's proceedings. Those proposals, and our responses, are divided into the following categories:

(a) Substantial Interest and Governance.

(b) Caps, Budgets and Workplans.

(c) Anti-Duplication Initiatives.

(d) Other Proposals.

1.1.4 While we have not repeated our two key principles in the body of these submissions, it is important in our view for the Board to maintain the appropriate context, i.e.:

(a) Intervenors are represented in Board proceedings in part, of course, because their experience and diversity of viewpoint adds considerable value to the process, one of the few conclusions on which there appears to be a full consensus amongst all parties. However, it is also important to remember that ratepayers are represented primarily because everyone around the table is spending their money, so they have the right to be there to protect their interests.

(b) Ontario and the Board have one of the best systems in North America for ratepayer and public interest representation in energy regulatory proceedings. It is both inexpensive relative to other jurisdictions, and very effective. Any changes contemplated by the Board must ensure that the excellence of the current system is not undermined by those changes.

2 SUBSTANTIAL INTEREST AND GOVERNANCE

2.1 ***Proposal #1 – Specific Interest and Mandate***

2.1.1 Many utilities and their representatives have proposed that intervenors, at the outset of any new proceeding, be required to provide details of their specific interest in the proceeding, and to prove that they have a specific mandate from their constituency to intervene in that proceeding.

2.1.2 There are two parts to this. The first part is the nature of the intervenor`s interest. For a ratepayer group intervening in a rate application, the answer to the question of the intervenor's interest is usually pretty obvious. It has two main components:

(a) Revenue requirement, i.e. how much money does the utility want from the ratepayers; and

(b) Cost allocation and rate design, i.e. from which customers does the utility want to collect that money.

2.1.3 What appears to be proposed now is that this would not be enough. Some utilities would like an intervenor to be more specific, right from the outset. Interest in the proceeding would be things like:

(a) We are concerned that the capital plan is too aggressive.

(b) Our interest is in creating downward pressure on the utility's wage rates.

2.1.4 SEC considers it irresponsible in most cases for an intervenor to make specific statements of that nature at the outset of a rate proceeding. Until the discovery process is complete, at the very earliest, it is rarely possible to identify the key weaknesses in the utility's proposals. Things that appear to be weak will prove solid after discovery. Things that appear solid will prove to have underlying problems, which are unearthed during discovery. Those two types of clarifying information are the whole point of discovery.

2.1.5 In addition, those narrow statements of interest are not true overall. The interest of school boards is not in utility wage levels. That is something for utility management to control. The interest of school boards is in the relationship of utility rates to utility performance, which flows from a foundation of good utility management. When we look at utility wage levels, it is not because we want to micromanage the utility; it is because we are looking at the quality of the utility's management decisions.

2.1.6 Therefore, our actual interest in the application is, in most cases, – unless there are general issues of principle being raised – how much the utility wants, and from whom. To say anything different would be incorrect.

2.1.7 The second component of this proposal is the notion that the intervenor organization will get a specific mandate from its members for each proceeding in which it intervenes. For example, if SEC wishes to intervene in the London Hydro rebasing application, it would be required to poll its members to determine whether they support that intervention.

2.1.8 That is not how representative organizations work. SEC has a set of principles driving its choices of proceedings in which to intervene. Those principles are supported by the organization's members. The principles relate to impacts on school boards, value for money, and long term implications. For example, the Board will be aware that SEC does not intervene in the rate cases of most smaller utilities (measured by number of schools affected), with one main exception. We will intervene if there is an important point of principle being addressed in the proceeding (a new interpretation of a rule, for example), and it may apply to other utilities.

2.1.9 Similarly, SEC will generally not intervene in leave to construct or service area amendment proceedings, again with some exceptions. A leave to construct that has significant long term rate implications, for example (like the GTA Reinforcement), may be an exception. As well, an SAA may be of interest as part of a longer term strategy to ensure that industry rationalization (or competition for service territories) does not create disadvantages for school boards.

2.1.10 Members of organizations use various methods to decide the scope of the organization's activities. Going back to the membership for every little thing is one of the least common, and is inherently inefficient in most cases. More common is to establish a set of criteria, and require regular reporting of the outcomes. That is what SEC and many other intervenors do.

2.1.11 Our conclusion, therefore, is that the first proposal is wrong on both counts. It is wrong by requiring inaccurate and irresponsible specificity at the front end of a proceeding. It is wrong by seeking to impose a single model on the internal structure of intervenor organizations, especially when that model is a poor one for most organizations.

2.2 ***Proposal #2 – Governance of Representatives***

2.2.1 The second proposal is that the Board monitor or require evidence of the specific methods that intervenor representatives are being instructed and controlled. The implicit assumption is that some lawyers and consultants are "off on a frolic", lacking any real backing from the intervenor organization that purports to retain them.

2.2.2 This appears to SEC to be a solution to a non-existent problem. There is not the slightest doubt in the minds of anyone at the Board that organizations like SEC, CME, IGUA, AMPCO, CCC and others have selected and instructed their counsel and

consultants on what they want said and done on their behalf. In every case, the Board has had direct contact with the organizations, and had that fact affirmed face to face. If Bob Williams or Wayne McNally tells the Board directly – as they have - that SEC's counsel speaks on behalf of their membership, that should be the end of the matter. How they and their organization ensure that is true is really none of the Board's concern.

2.2.3 If there is a specific circumstance in which the Board feels that a counsel or consultant is somehow disconnected from their client, the intervenor, then in our submission the Board should ask the representative to arrange direct contact with the client, so that the Board can confirm that counsel or consultant is speaking on their behalf, or investigate further if that does not appear to be the case.

2.2.4 In our submission it is not appropriate for the Board to interfere in the relationship between an intervenor organization and its representatives, and therefore instruction and supervision of counsel and consultants should only concern the Board if there is a clear and compelling reason for the Board to doubt that the representatives are speaking for the organization.

2.3 ***Proposal #3 – Annual Filings***

2.3.1 One thing that has been discussed amongst intervenors and utilities is the notion of annual or initial intervenor registrations or filings.

2.3.2 The issue is essentially one of new or changing intervenors. The Board does not really have a problem with SEC, or CCC, or other such intervenors that the Board knows well. Rules to require organizations like that to regularly provide more details on what they are doing are, as Michael Janigan said in the Stakeholder Conference, simply "busywork". Nothing is gained, but additional administrative burden is imposed.

2.3.3 That is not true of new intervenors, or intervenors going through major internal changes. For that reason, SEC supports the notion of initial registration, and annual or other periodic filings, by intervenors.

2.3.4 The basic concept is that a new intervenor (or existing ones, at the outset of the system), would file a summary document describing its structure and mandate, membership, etc. This would in essence be the evidence that the intervenor qualifies for intervenor status and cost eligibility, something that is currently required in every Notice of Intervention. Under this system, the intervenor in its Notice of Intervenotion would now simply advise that it registered on a specific date, and its structure, mandate and membership are unchanged. This is essentially what happens in any case with regular intervenors.

2.3.5 Further, SEC supports the concept that intervenors would do an annual filing. What we propose is that the intervenor provide a certificate of its CEO that its structure,

mandate and membership are unchanged, and that the organization and its members are satisfied with their governance of, and reporting from, their counsel and consultants. Details should not be required. As is the case with certificates of the CEOs of utilities under the Board's rules, this approach puts the onus squarely on the CEO to ensure that they are meeting appropriate standards.

2.3.6 Some utilities have proposed that intervenors file financial statements. This does not appear to us to be necessary. The internal financial workings of an intervenor organization do not appear to be something that would normally concern the Board. What would the Board do with the information? Would it seek out poor intervenor financial management, as if the intervenor organization were regulated by the Board? Would it conduct audits?

2.3.7 The only reason for intervenor financial information would be to assess financial need. That is part of Phase 2 of this proceeding. If the Board decides to move away from the "value to the process" paradigm, and toward "financial need", then in our view the question of intervenor financial information may need to be revisited. Until then, it would serve no purpose.

3 CAPS, BUDGETS AND WORKPLANS

3.1 *Proposal #4 – Predetermined Caps*

3.1.1 A number of utilities have proposed caps on cost awards, either in aggregate for a given proceeding, or on an intervenor by intervenor basis. This is a top-down approach to controlling intervenor costs.

3.1.2 We note our earlier submissions that, given the low-cost result of the Ontario system, controlling intervenor costs does not appear to be a pressing issue. The Board already does that quite successfully.

3.1.3 However, even if there were a legitimate cost control goal, the use of caps is a fundamentally flawed approach to achieving that goal.

3.1.4 We heard many times at the Stakeholder Conference the idea that the Board and intervenors have so much experience now at rate proceedings that estimating costs in advance should be easy. Indeed, estimating the average costs of all intervenors in an average LDC rebasing application, for example, is fairly easy. But what is being proposed is not an average over many proceedings. It is a proceeding by proceeding cap. Estimating a reasonable cap for an individual proceeding is not easy at all.

3.1.5 We have already seen what happens with caps in policy processes. The Board establishes a cap for each process. An intervenor who does not need as many hours as the cap, receives the lesser amount, which is only fair. However, an intervenor who needs more hours than the cap is limited to the cap. If the cap is a reasonable average, then the average amount actually paid in costs will be less than the cap, because of this asymmetry. Mathematically, a top-down cap based on averages will force intervenors to under-recover their costs over time, which is exactly what happens in policy processes.

3.1.6 A good analogy might be utility revenue requirement. When a utility revenue requirement is approved, many individual components are reviewed, and a total is obtained. The utility's forecasts of the individual components (Maintenance O&M, for example, or interest costs, or customer contributions, or late payment revenues) are the best they can do, but they are not held to them. They have a global number, and can spend it as they determine is best as the year unfolds. If each of the components of revenue requirement were to be treated as a separate cap, then the utility would actually be restricted to spending less than the overall revenue requirement, since for some of the components the need for spending would be less than forecast, and for others it would be more. Where it is less, they would only be able to recover from ratepayers the lesser amount. Where it is more, they would be restricted to the cap. The reason the Board doesn't do this is that it would be inherently unfair to the utility, and would result in systematic under-recovery.

3.1.7 Yet individual caps on individual proceedings is what is being proposed. In our submission, because of the built-in asymmetry this is simply a disguised way of forcing intervenor organizations to fund an increased percentage of the cost of their participation.

3.2 ***Proposal #5 - Budgets***

3.2.1 Some utilities have proposed that intervenors be required to provide budgets for their participation in a proceeding at the outset of the proceeding. This is not a sensible proposal, for three reasons.

3.2.2 First, the activity of the Board in assessing budgets is in essence identical to assessing cost claims, but on a forecast rather than actual basis. It is thus inherently more difficult, and would subject the Board to increased administrative burden and uncertainty.

3.2.3 Second, no-one has identified any benefit to this budget process, let alone a benefit sufficient to offset the increased administrative burden. Who is assisted by this budget? Is the benefit that some intervenors will end up recovering less than they actually spent on the proceeding? How is that a benefit, and to whom? Is the benefit that the utility will know in advance the intervenor costs expected? Intervenor costs are in most cases immaterial to their budget. Why is it important to know that cost, but OK to rely on forecasts for all other costs?

3.2.4 Third, at the beginning of a proceeding preparing a reasonable budget for the proceeding requires broad assumptions with a limited foundation. Scheduling, scope, emergence of live issues, settlement vs. oral hearing, and many other things must be assumed, but at that point they are merely speculation, and some at least are likely to be wrong.

3.2.5 As SEC pointed out at the Stakeholder Conference, SEC does a "budget" for each proceeding at the time we do our Notice of Intervention. The purpose of our budget is resource allocation. We need to know that the individuals we assign to a matter will have the time to do it, at the times required, and considering the other work they have to do within the same time frames.

3.2.6 At present, SEC is preparing its Notice of Intervention for the OPG 2014-2015 Payment Amounts proceeding, EB-2013-0321. Thus, we are also preparing our resource allocation budget for that proceeding. In Section 3.6 below, we provide that budget, and the assumptions we have used to prepare it. The description is more fulsome than we would normally prepare, because it is being provided to the Board. In internal budgeting, we discuss the assumptions but don't normally prepare a written summary. It is not necessary. We would also normally not include dollar figures, as our key purpose is to ensure available hours by individual. However, we have added that column to assist the Board for this example.

3.2.7 In the OPG example, as in any other budget, the total hours, 615, and dollars, about $158,000, are driven by the assumptions. It is a major case, with many billions of dollars at issue, so the assumptions will have bigger impacts, but our estimate is that there could easily be a 30% variation down, or 15% up, if the assumptions turn out to be incorrect. In our experience, the assumptions do usually turn out to be incorrect in any given proceeding. The saving grace is that incorrect assumptions in different proceedings randomly offset each other, and our budgeting is inherently conservative, so that our overall resource allocation can still work out reasonably well.

3.2.8 The purpose of providing the OPG preliminary budget is to demonstrate the difficulty in preparing a budget that is robust. Too much of the process is out of our control, and so in any given case our budget is unlikely to be accurate.

3.2.9 Our conclusion, therefore, is that budgets create administrative burden at the beginning, for no apparent benefit, and would be routinely inaccurate in any case due to high reliance on uncontrollable assumptions.

3.3 ***Proposal #6 – Workplans and Issues Identification***

3.3.1 Some utilities have proposed that intervenors be required to identify specific issues of concern, and file workplans for each intervention.

3.3.2 For the reasons already discussed under Proposals #1 and #5, we believe this is impractical, and in any case misconstrues the role of the intervenor during the discovery phase, when the issues that will matter are essentially being discovered.

3.4 ***Proposal #7 – Harmonized Hourly Rates***

3.4.1 SEC has proposed, in its initial submissions, that the hourly rates for lawyers and consultants of intervenors and regulated entities be harmonized. We see no reason why ratepayers should pay twice as much for an hour of a utility lawyer's time than for an hour of an intervenor lawyer's time.

3.4.2 As previously noted, SEC does not expect that this will result in an increase in the hourly rates for intervenor lawyers and consultants. Rather, our view is that the likely result is a decrease in the higher hourly rates charged by utility lawyers and consultants.

3.5 ***Proposal #8 – Utility "Cost Claims"***

3.5.1 SEC has proposed, in its initial submissions, that at the same time as the intervenor cost claims are filed, the Applicant in the case should be required to file a similar document, setting out their costs for the proceeding. While it would not require Board approval, it would provide context for the reasonableness of the intervenor cost claims

in the particular circumstances of the case.

3.6 ***Sample Budget and Assumptions***

3.6.1 The following is SEC's preliminary resource allocation budget for the OPG 2014-2015 Payment Amounts proceeding:

OPG 2014-2015 SEC Preliminary Budget

Resource	Rate	Tasks	Oct-13	Nov-13	Dec-13	Jan-14	Feb-14	Mar-14	Apr-14	May-14	Jun-14	Jul-14	Totals	$$$
Jay Shepherd	$330	*Nuclear Acctg/Tax; Corp. Services; Lead*	15	15	20	20	10	50	50	30	0	10	220	$72,600
Mark Rubenstein	$170	*Nuclear and Hydro Operations/Capital*	0	10	60	40	20	20	90	30	0	10	280	$47,600
Consultant (TBD)	$330	*Niagara Tunnel Prudence Review*	0	20	20	20	5	10	30	10	0	0	115	$37,950
Totals			15	45	100	80	35	80	170	70	0	20	615	$158,150

3.6.2 We note that this budget compares to costs ordered for SEC in the last Payment Amounts proceeding, EB-2010-0008, of $211,131, and in the first Payment Amounts proceeding, EB-2007-0905, of $165,866. Implicit in this budget is an assumption that as parties gain experience with Payment Amounts proceedings, some of the costs of participation may decline.

3.6.3 The OPG proceeding budget is driven by the following assumed schedule. SEC has no specific information supporting this schedule, but has estimated it based on our experience with major cases:

Schedule Assumed

Issues List	29-Nov-13
Ist Round IRs due	20-Dec-13
IR Responses Due	20-Jan-14
2nd Round IRs due	07-Feb-14
IR Responses due	21-Feb-14
Procedural Issues	21-Mar-14
ADR (3 days)	26-Mar-14
Oral Hearing (8 days)	08-Apr-14
Argument	02-May-14
Intervenor Argument	16-May-14
Reply	30-May-14
Decision	14-Jul-14
Rate Order	31-Jul-14

3.6.4 Because this is a major case, we have also had to make a number of substantive assumptions about the scope and intensity of the case, including the following:

(a) The Niagara Tunnel prudence review, while it still has to take place in this proceeding (and it is a lot of money), will not be as contentious as it might otherwise have been, because some of the key information relating to the problems with this project has been presented in prior proceedings.

(b) OPG's nuclear refurbishment plans will be an important issue in the proceeding, and will not be restricted by Ministerial directive. However, the refurbishment will also not turn into a public debate over the future of nuclear. The Board panel will control this procedural risk throughout the process.

(c) The substantial time spent in past proceedings on tax and accounting issues, particularly past tax losses, and nuclear accounting impacts, will not be repeated in this proceeding. The refurbishment plans will still entail significant accounting and related tax issues, which will be complex, but they will take less time than in EB-2010-0008.

(d) The settlement in EB-2012-0002 includes complex resolutions to a number of difficult issues, and reviewing the implementation and impacts of that settlement will require a material investment of time.

(e) OPG is undergoing an important business transformation process, designed to improve its cost-effectiveness. The review of this process and its impacts will be material.

(f) OPG's control of labour costs, particularly with respect to nuclear costs, has been a major issue in past proceedings. We expect that OPG's continuing efforts to control these costs will be an important issue in this proceeding as well.

(g) The Board will be regulating the payment amounts for a number of additional hydroelectric facilities for the first time. This is expected to add some time to the proceeding.

(h) SEC has not selected a consultant to assist with this proceeding. Our current assumption is that a consultant will be retained to deal with a discrete area, likely the Niagara Tunnel. Alternative areas of the consultant's concentration could be nuclear refurbishment costs, or labour cost control. The overall resource requirement and timing is likely to be the same, but the selection of the specific workplan will depend on which consultants are available, and their areas of special expertise.

3.6.5 Our best estimate is that the range of possible outcomes in this proceeding is from about 70% of the budget estimate, to 115% of that estimate. The asymmetrical nature

of the range is because, in a resource allocation budget, estimation must necessarily be conservative. The consequence of not having resources available when required is more serious than the consequence of having temporarily idle resources (which in any case rarely happens).

4 ANTI-DUPLICATION ACTIVITIES

4.1 *Proposal #9 – Interrogatory Process Changes*

4.1.1 Utilities are concerned with duplication of interrogatories by intervenors, and propose tighter controls to prevent that.

4.1.2 SEC is the first to agree that this was a problem in the past. It has largely been solved, in part by the practice of having Board Staff go first, and in part by increased intervenor co-operation in rate proceedings. In our view, it is unusual to have any significant number of duplicate interrogatories.

4.1.3 Hydro Ottawa specifically noted at the Stakeholder Conference that, in their last rebasing case, they had 36 duplicates out of 650 interrogatories. We asked to be provided with those duplicates, but were told to simply search "Please See" in the responses, and that will bring them all forward.

4.1.4 SEC has reviewed the results in EB-2001-0054, the last Hydro Ottawa rebasing, and found the following:

(a) There were a total of 926 interrogatory and technical conference questions and sub-questions, of which 278 were from Board Staff and 648 were from intervenors.

(b) We were able to locate 36 "please see's", but eight of them were references to attachments, rather than indications of duplication. That left 28 that were purportedly duplicates.

(c) Of those purported duplicates, 5 were instances of Hydro Ottawa referring Board Staff in one question to the answer given to another Board Staff question, and 3 were instances of Hydro Ottawa referring Energy Probe in one question to the answer given to another Energy Probe question. In each of these cases, the alleged duplication may in fact have been inclusion of an overlapping fact in two distinct areas of inquiry.

(d) We did find 20 intervenor interrogatories that allegedly duplicated questions of Board Staff or another intervenor, a 2.16% duplication rate. Some of these duplicates may not have been identical, or may be fairly characterized as different ways of trying to get at the same issue. The number of real duplicates is probably somewhat smaller.

4.1.5 Despite our review, SEC believes that even 20 duplicates out of 926 is wasteful, and would like to see it improved. In our view, the Board's best solution is to consider the level of duplication – in interrogatories and in all other aspects of the proceeding – when determining the approval of cost claims.

4.2 ***Proposal #10 – Expanded Role of Board Staff***

4.2.1 A number of parties have proposed that the Board review the role of Board Staff, with a view to expanding the Staff responsibilities and reducing the intervenor responsibilities in rate cases.

4.2.2 This is not a new idea. It was discussed extensively at the Board about seven years ago, including a scholarly paper on the issue, and a round table of many interested parties. Some experimentation also took place with different Staff models.

4.2.3 The primary problem here is that, once Staff takes an adversarial role in a proceeding, their ability to assist the Board panel behind the scenes must be severely restricted. This led, at one point, to the "two Staff" model, which proved to be quite expensive and difficult to manage. The alternative is for Board panels to lose the direct assistance of Board Staff during a proceeding. Fundamentally, the role of panel advisors (like judges' clerks in a court) is inconsistent with the role of a party to the proceeding (like a prosecutor in court). One person cannot fulfill both roles at the same time, and still follow the required legal rules of fairness and transparency.

4.2.4 SEC is not opposed to additional experimentation with Staff roles. However, we caution the Board that the evolution of Board processes to the Staff and intervenor roles currently in place was in large part because that model works well. Moving back in time may be either more costly, or less effective, or both, or may entail loss of important benefits that Staff currently provide to Board panels.

4.3 ***Proposal #11 – Limits on Review Scope***

4.3.1 Some utilities have argued that intervenors should be required to split up responsibility for reviewing the issues in a proceeding at the outset, such that Intervenor A will be responsible for Issue 12, for example, and Intervenor B will be responsible for Issue 7, and neither can look at the evidence related to the other's issue.

4.3.2 This has two problems. First, it is directly inconsistent with our first principle, i.e. that ratepayers are at the table because it's their money, so they have a right to be there. Saying that ratepayers can be there, but cannot participate fully, does not adhere to that principle.

4.3.3 Second, there is a more pragmatic reason such limits will not work. Intervenor A can only be asked to rely on Intervenor B if Intervenor A has good reason to believe Intervenor B's positions on the issues are in Intervenor A's interests. Intervenor A can only do that by having some review and discovery of the evidence relating to those issues. Absent that review and discovery, Intervenor A is not in a position to form an opinion. The practical result of this is that settlement would no longer be possible. Everything would have to go to hearing, at which every party has a statutory right to test the evidence.

4.3.4 This proposal is really a bit of a red herring. Intervenor representatives already rely on each other as much as possible, because they need to be productive for the benefit of their clients. Formalizing this with rigid rules will not create any more benefits, or any cost savings, but by reducing flexibility will likely generate disadvantages, prevent settlements, and increase overall regulatory costs.

4.4 ***Proposal #12 – Forced Combinations***

4.4.1 A more extreme proposal is that of some utilities that would like to force some intervenors to combine their interests.

4.4.2 As a general practice, this is a very bad idea. In most cases it would amount to disenfranchising legitimate ratepayer interests, contrary to law and contrary to the Board's principles of regulation. In addition, forcing groups to work together would create organizational bureaucracies that would likely increase costs.

4.4.3 Where groups can work together, like the organizations that make up VECC, or SEC, or GEC, they generally do. Sometimes they need a little encouragement from the Board (e.g. SEC), but where it makes sense, it happens.

4.4.4 There may be the exceptional case in which the Board perceives that separate representation of two similar interests in a proceeding has not been helpful. In those unusual cases, in our view the Board already has ample tools available to prevent that from recurring, as evidenced by the successful use of those tools in the past.

5 OTHER PROPOSALS

5.1 ***Proposal #13 – Landowner Status***

5.1.1 The proposal has been made that landowners affected by a Board proceeding have automatic intervenor status and cost eligibility, without applying for it. The rationale is that they clearly have a substantial interest individually, and therefore there should be no administrative barriers to their participation.

5.1.2 SEC opposes this proposal. In much the same way (perhaps even more so), individual ratepayers have a substantial interest, and so should be allowed to be automatic intervenors and have automatic cost eligibility. This does not make for an efficient process. Individuals or entities that have a direct interest in a proceeding – whether as ratepayers or landowners - should still have two responsibilities:

(a) To advise the Board, the Applicant, and other parties of their intention to intervene and seek costs; and

(b) To work together with similarly impacted individuals or entities so that the process can proceed efficiently.

In much the same way as ratepayers work together through groups with a common interest (school boards, for example), landowners should have an obligation to do the same unless their individual interests are unable to be protected through a common intervention.

5.1.3 If the problem is with short timelines for Board processes, in our experience the Board has always been willing to accommodate parties that need extra time in order to participate in an efficient manner.

5.2 ***Proposal #14 – EDC Status***

5.2.1 EDC complains about the rule that prohibits costs for any organization whose members would be ineligible for costs. That is, if individual members cannot claim costs, they cannot form a new entity and thus get around the rule.

5.2.2 We see no reason to change this rule. The Board always has a discretion to allow costs to an entity that will add a unique perspective and thus improve the process, even if the entity would otherwise not qualify. Given that the EDA would not normally have any reason to intervene in, let alone seek costs for, most Board proceedings (particularly rate applications of their members), it would appear to us that, where their presence would add value, such as in some policy consultations, the Board`s discretion is sufficient to ensure that they can participate fully.

5.3 ***Proposal #15 – PWU Status***

5.3.1 By contrast, we were surprised to learn that the PWU is, in some cases, not allowed costs eligibility for rate and other applications that affect its members.

5.3.2 While it is true that the interest of unionized employees in a rate case, or in a policy proceeding affecting rates and revenues, is not as broad as the interests of the ratepayers, it appears to us clear that those employees normally do have a substantial interest in the result of the proceeding. Further, while we often disagree with the positions of PWU, and often the utilities do not need another voice in the proceeding supporting their spending proposals, we also have seen many instances where the participation of the PWU has added value.

5.3.3 In SEC`s view, the PWU may have a point that where their members are affected by a proceeding, they should generally be eligible for costs.

6 GENERAL ISSUES

6.1 ***Conclusion***

6.1.1 SEC appreciates being allowed to provide input to the Board on these important issues.

6.2 ***Costs***

6.2.1 SEC submits that it has participated responsibly in this process with a view to providing assistance to the Board, and requests that the Board order payment of its reasonably incurred costs for that participation.

All of which is respectfully submitted.

Jay Shepherd
Counsel for the School Energy Coalition