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April 29, 2022

Nancy Marconi
Registrar
Ontario Energy Board
2300 Yonge Street, P.O. Box 2319
Toronto ON
M4P 1E4

Dear Ms. Marconi,

RE: EB-2022-0011 Framework for Review of Intervenor Processes and Cost Awards - Submission of Energy Probe

Attached is the submission of Energy Probe Research Foundation (Energy Probe) in the EB-2022-0011 Framework for Review of Intervenor Processes and Cost Awards.

Respectfully submitted on behalf of Energy Probe.

Tom Ladanyi
TL Energy Regulatory Consultants Inc.

cc. Patricia Adams (Energy Probe)
Roger Higgin (Sustainable Planning Associates Inc.)
Participants

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**Framework for Review of Intervenor Processes and Cost Awards
EB-2022-0011**

Energy Probe Submission

April 29, 2022

General Comments

The OEB aims to become a “Top Quartile Regulator.” One of the initiatives to reach that level is a review of its intervenors processes and cost awards.

“To perform at this level, the OEB will need to rely on a significant amount of public trust—an essential ingredient for institutions that have delegated authority from government. Public trust in the context of a regulator requires that all interested parties—the regulatory community, the public and public representatives—have confidence that the regulator will develop policies and issue decisions that are fair, well-reasoned, and responsive to their concerns.” (OEB Modernization Review Panel report page 9)

As stated above, significant level of public trust is needed to be a Top Quartile Regulator. The public has diverse interests which at the OEB are represented by a diverse group of intervenors. Public participation as represented by intervenors in proceedings is essential for the OEB to be a Top Quartile Regulator.

Energy Probe Research Foundation (Energy Probe) has been an intervenor in OEB proceedings and a participant in its consultations for over 30 years and has seen the evolution of the practice and procedures for intervenor processes and cost awards that is now in place. Energy Probe believes that the OEB is already a Top Quartile Regulator in the category of intervenor processes and cost awards. The OEB should be commended for what it has achieved over the years. It effectively and efficiently regulates more utilities than any other provincial regulator in Canada or state regulator in the United States. It does this with greater participation by the public through its intervenor processes and cost awards than any other regulator. Changes that would make it more difficult for the public to participate in OEB proceedings would adversely affect OEB’s rank as a Top Quartile Regulator.

It should be recognized that ratepayers pay for the costs of intervenor participation through rates. The cost of intervenor participation is negligible when compared to total utility costs that are paid by ratepayers. Apart from intervenor costs, ratepayers also pay for OEB’s costs and the regulatory costs of utilities. Both of these are larger than the cost of intervenor participation. If

the intention is to reduce cost of regulation, the focus should be on the total costs of regulating the Ontario energy sector, not its smallest component.

The key to improving regulatory efficiency is by active adjudication. The streamlining of filing requirements, issuance of draft issues lists and specification of areas requiring expert or specialized evidence such as benchmarking.

Answers to Consultation Questions

Identified Concerns

1. Are there concerns other than those identified in this report, related to intervenor processes, or cost awards that the OEB should examine?

The OEB should increase the hourly rates for counsel and consultants representing intervenors. These have not changed since 2007 and have not kept up with inflation.

Clarifying Application Expectations

2. Are there other initiatives that the OEB should consider to better clarify application expectations and result in more efficient proceedings?

The OEB should review its Renewed Regulatory Framework for Electricity. All large utilities are now filing Custom IR applications. Some of these have become 5-year Cost of Service applications with a large amount of evidence dealing with capital programs and projects with little or no incentives for capital productivity. Testing all this capital evidence takes time and effort. The OEB should revise the RRFE to streamline Custom IR applications-by condensing the many duplicative schedules and requiring Excel workbooks for each of the principal areas of evidence.

The current rules regarding ICM funding encourage utilities to overspend on capital and underspend on maintenance. The excessive number of applications for ICM funding, require more time and effort for regulatory review. The OEB should tighten rules for ICM applications.

Intervenor Status: Substantial Interest

3. How should the OEB define substantial interest for leave to construct applications?

The OEB has developed a standard issues list for leave to construct applications. The issues list consists of 14 specific issues. A party may have an interest in a number of these issues, or a strong interest in only one of the issues. It is rare for a party to have an interest in all 14 issues. Is substantial interest determined by interest in a number of issues or is substantial interest determined by the strength of interest in a particular issue? Energy Probe believes that both the strength of the interest and the number of issues that a party is interested in should be considered in the determination of which party has a substantial interest. There is no simple rule and the OEB should decide on a case-by-case basis which parties have an interest that is substantial enough to be allowed to intervene and be eligible for cost awards.

4. How should the OEB define substantial interest for rate applications?

There is no standard issues list for rate applications. In some rate cases the issues list is not approved until the proceeding is started. Energy Probe suggests that the OEB should include a preliminary issues list with the notice of proceeding and ask parties who are applying for interventions to identify the issues that are of interest to them together with reasons for their interest. This would allow the OEB to determine the extent of party's interest in the proceeding. As in the case of leave to construct applications, there is no simple rule and the OEB should decide on a case-by-case basis which parties have an interest that is substantial enough to be granted status and be eligible for a cost award.

5. Are there other types of applications for which substantive interest needs to be further defined?

Energy Policy and Regulatory Policy consultations and proceedings are other types. Examples of Energy Policy consultations and proceedings include gas Demand Side Management Framework and Electricity Conservation and Demand Management (latter no longer under OEB jurisdiction). Regulatory policy would include OEB consultations and proceedings such as Integrated Resource Planning Policy for Enbridge Gas and System Expansion for Gas, the Renewed Regulatory Frameworks for Electricity and Gas, the current proceeding on the Framework for Intervenor Processes and Cost Awards. These are broad-based public interest matters and the resulting decisions will influence energy policy and rates for all Ontario energy consumers in the future. Accordingly, the OEB should seek broad public input through various forms of public engagement. As discussed above, the OEB should include a preliminary issues list with its notice. Parties requesting approval to intervene or participate would have to identify issues of interest and provide reasons. The Board OEB would decide on a case-by-case basis

which parties have an interest that is substantial enough to be allowed to intervene and be eligible for cost awards.

6. Are there other changes the OEB should consider with respect to accepting intervenors into proceedings?

No, the OEB should not consider other changes. The “right to be heard” is a basic requirement under Provincial Law and the Statutory Powers and Procedures Act related to tribunals. Limiting this right by rules is not appropriate. Only the rules for parties to act responsibly, efficiently and protect the right of all parties are mandatory.

Cost Awards

7. What more could the OEB do to encourage greater collaboration of intervenors with similar views on issues and similar interests?

Intervenors represent diverse views and interests. This diversity is a strength of the current system. Some intervenors may have similar views and interests on certain issues. There is already collaboration between experienced intervenors on some issues and they do not need greater encouragement.

8. Should parties representing for-profit interests be eligible of cost awards?

Currently for-profit interests are not individually eligible for cost awards but are eligible if represented by an association or coalition. The alternative would be for individual businesses to represent themselves which would be far less efficient. Instead of a coalition representing 400 business customers, each of the customers would have to intervene individually. Energy Probe believes that associations and coalitions representing for-profit interests should continue to be eligible for cost awards.

9. Is there a better way to represent the interests identified by individual rate payers?

If an individual ratepayer wishes to intervene the ratepayer should file a letter of intervention outlining the issues to be explored and the ratepayer’s expertise. The OEB would then decide if the ratepayer’s interest is substantial and if the ratepayer has the expertise to effectively participate in the proceeding. Individual ratepayers who do not meet the qualifications should be advised to discuss their concerns with OEB Staff to see if it can represent them.

Frequent Intervenor Filings

10. How should the OEB proceed with the annual filings currently required from frequent intervenors?

Annual filings of frequent intervenors are there to inform the public to see if their interests are represented in a proceeding. Energy Probe believes that the annual filings serve a useful purpose and should continue in their present form.

Use of Expert Witnesses

11. Are there other changes that the OEB should consider to clarify the requirements for experts filing evidence and the related requests for cost awards?

As proposed above, a notice of a proceeding should be accompanied by a preliminary issues list. On the list the OEB should identify issues where it could be assisted by expert evidence. A party requesting approval to intervene or participate would in the letter of intervention offer to provide expert evidence on the issue(s) identified by the OEB. If the OEB approved the intervention it would order the party to provide a proposed budget for expert evidence in PO No.1. If the OEB finds that the proposed budget is appropriate, it would approve it in a subsequent PO allowing the expert to start work on the evidence.

Active Adjudication

12. Are there other ways Commissioners can enhance their approach to active adjudication while ensuring procedural fairness?

Issues lists should become a more appropriate tool for focussing proceedings. Issues should be based directly on the filing requirements and provided in preliminary form with the notice of proceeding. In hearings there is sometimes reluctance of Commissioners to strike a balance between excessive cross examination and the evidentiary record, especially if the witness panel provides lengthy answers. Commissioners should also consider limiting cross-examination times based on the issues remaining to be heard, after time estimates are submitted and reviewed by Board Staff.

Oversight of Scope of Proceedings

13. Are there other tools that the OEB could employ to ensure that the scope of a hearing and materiality of issues is clearer earlier in the proceeding?

As noted above, a preliminary issues lists should be provided with the notice of the proceeding. The OEB should approve a final issues list following the discovery process and input from parties.

Generic Proceedings

14. Are there existing issues that do not currently have policy development work underway, which should be addressed through generic hearings instead of through individual applications?

As noted above, RRFE should be reviewed, particularly related to capital investments. Some electricity distributors claim to have unique capital investment needs, whereas they do not seem unique. The OEB should consider a generic proceeding on capital investments by distributors.

15. Are there other changes that the OEB could consider with respect to generic proceedings?

Energy Probe has no other changes that the OEB should consider with respect to generic proceedings.

Respectfully submitted on behalf of Energy Probe by its consultants

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