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April 29, 2022

EB-2022-0011 Framework for Review of Intervenor Process and Cost Review
Pollution Probe Comments

Dear Ms. Marconi:

Pollution Probe appreciates the invitation to submit comments related to the OEB Intervenor Process and Cost Review. Please find the comments attached and please do not hesitate to reach out to the undersigned should you have any questions.

Respectfully submitted on behalf of Pollution Probe.

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Introduction and Context

On March 31, 2022 the Ontario Energy Board (OEB) released an invitation for participation in its' Framework for Review of Intervenor Process and Cost Review. This is part of the OEB's continued modernization journey, as it seeks to enhance the efficiency and effectiveness of the adjudicative processes. Pollution Probe appreciates the invitation to participate and as the OEB knows, Pollution Probe partners with consumers, communities and other impacted stakeholders to provide an efficient and integrated approach to participation in OEB consultations and proceedings. This is a consolidated approach and provides an opportunity for consumers and other stakeholders that have a challenge engaging in OEB proceedings on their own.

Pollution Probe also appreciates that the OEB recognizes the significant benefit that Intervenors bring to proceedings and policy discussions at the OEB. In order to achieve the OEB's goals, including innovation and modernization, an open and transparent approach is required. Among other benefits, the OEB's Top Quartile review found that Intervenors have value because decision-making will be better informed. Pollution Probe agrees and has consistently seen this benefit in proceedings and OEB decisions. As will be noted below, there are a myriad of other benefits and opportunities to expand these benefits to other proceedings.

The OEB review of the Intervenor process and cost awards is just one of many OEB process areas for review as the OEB considers areas for continuous improvement in line with best practice modern energy regulation. This process has been reviewed on a rotating basis over time and has already been effective in ensuring a transparent, efficient and cost-effective approach. The OEB Intervenor process and cost awards are recognized as best practice in delivering significant benefits to Ontario.

Most applications request OEB approval for millions to billions in rate payer funding and some broader proceedings[1] have potential impacts beyond billions in costs. Using standard utility metrics, Intervenor costs are deemed immaterial as a percentage of overall utility costs[2] and are also relatively very small compared to rate payer funds spent by utilities in the normal course of applications including staff time, lawyers, consultants, experts, reports, surveys, etc. Applicants do not typically track applicant spending related to proceedings[3] since those costs are spread across multiple utility areas and budgets[4]. This results in an asymmetrical standard when assessing intervenor costs.

The OEB and Ontario consumers have seen significant net benefits and reduced costs under the current OEB process and it will be important that any adjustments add incremental value and do not remove the current consumer protection and other benefits achieved today.

[1] E.g. recent IRP proceeding EB-2020-0091
[2] $4.4 million against $24.6 billion of total utility costs per page 18 of the OEB Framework document.
[3] Including evidence preparation, staff time, regulatory support, lawyers, consultants, etc.
[4] I.e. covered withing the capital and O&M envelopes already approved by the OEB

The OEB Framework articulates that it is important to understand the purpose of each process review and what problem is being solved[5]. It is also important to consider the OEB process review in the context of the broader OEB processes to ensure that the areas with the highest opportunity for improvement are prioritized. It is also useful to consider why the OEB holds open, transparent and public proceedings and what the intended purpose of a proceeding is. Restricting the scope of a proceeding, limiting what is on the public record and/or decreasing stakeholder participation could decrease the timeline of a proceeding, but it will also decrease the value, transparency and validity of a proceeding, potentially undermining the OEB's top quartile goal to protect the public interest in a monopolistic industry.

In addition, modernization and innovation will not occur in a restricted environment favoring status quo monopolistic interests. Some utilities are open, collaborative and proactive and others are clearly lagging and fighting transparency, innovation and modernization. Pollution Probe believes that the OEB understands this challenge and has taken great efforts to launch many open consultations and advisory initiatives recently[6] in recognition that more needs to be done to leverage the value of all interested parties and impacted stakeholders.

The OEB has already implemented measures that have led to process improvements and efficiencies related to Intervenors. As part of the OEB's recent review of processes, the Intervenor cost claim process was moved 100% online via RESS. Even though the OEB incurred costs related to these IT upgrades and related training, this improvement appears to be working well for all parties and maintains the open, transparent and defendable process benefits that the current OEB process delivers. Intervenor costs are a relatively small portion of proceeding costs and tracking applicant costs[7] in a similar manner would help the OEB understand the total rate payer funds supporting each proceeding.

The OEB often refers to Intervenor discovery or argument when shaping an objective decision. OEB decisions that include Intervenor participation also result in a better decision and net cost savings to rate payers whether it was achieved through a Settlement Conference or full hearing[8]. Some examples are provided in this submission[9], but it is common in proceedings and the examples are too numerous to include in this submission. The overall value proposition is not just financial, but includes legal requirements, policy benefits, environmental protection, public safety and socio-economic benefits among others.

<u>Scope of the OEB Review</u>

The OEB indicated that "this initiative is intended to ensure that the cost of the interventions – both in terms of direct funding through cost awards and the costs associated with additional workload to applicants and the OEB – is commensurate with the value that is

[5] Section 5.2 OEB Framework document.
[6] Including FEI, RPPAG, DER Connects, TOU Rates, Green Button Consultation, etc.
[7] Internal and external costs related to a proceeding
[8] For example the net cost reduction for Rate payer was more than $150 million in the EB-2021-0148 and Intervenor contributions were extensively referenced in the OEB Decision.
[9] For example, the fundamental need for a $9 million project was revisited in EB-2020-0065 Leave to construct due to Intervenor participation and the project was withdrawn.

brought to the OEB's proceedings. This is balanced with the legal requirements of procedural fairness and the right to be heard.". It is important that any process changes be considered for a broader context in order to ensure incremental value is added without creating additional risks or potential deleterious effects. Pollution Probe suggests that it is not only the right to be heard that the OEB should consider, but overall value that results from this process. The OEB will not achieve its objectives without an open and inclusive approach. Also, given that Intervenor costs per proceeding are a much smaller proportion of rate payer funded costs compared to applicant costs, it is important not to miss the forest for the trees.

Based on work conducted by the OEB to-date, the Framework identifies a three-pronged approach to improve intervenor processes and cost awards:

1. The first prong is to clarify expectations on the evidence to be filed for applications which should focus intervenors' reviews and reduce costs.

2. The second prong is to amend the *Rules of Practice and Procedure* (Rules) *and Practice Direction on Cost Awards* (Practice Direction) (and potentially other Practice Directions), or provide alternative guidance documents, to provide clarity for intervenors, applicants or the Registrar on matters such as intervenor status and cost awards

3. The third prong is to enhance the OEB's active adjudication to allow for application-specific scope and intervention decisions

Pollution Probe has seen variation in the evidence submitted for similar proceeding by applicants and has even seen variance in evidence submitted for similar proceedings for the same applicant. There have been cases where an application is incomplete or key documents were not filed on the public record through RESS. Pollution Probe, OEB Staff and others have worked with applicants to close the gaps and ensure that the information needed to proceed efficiently was available. The OEB has taken some steps to clarify filing requirement for applicants and this is helpful. Issue Lists are also helpful to focus proceedings and ensure that key elements are identified up front. Due to the variation and complexity of some applications it may not be possible to ensure all relevant information is on the record up front since the process of discovery can identify significant issues relevant to the proceeding.

The OEB has substantial documentation outlining guidance and requirements related to the Intervenor processes and cost awards. These include the OEB Rules of Practice and Procedure, Practice Direction on Cost Awards, Annual Filing Requirements, among others. The OEB has also provided supplementary direction where appropriate during specific proceedings[10]. These documents have been optimized over decades, appear to be clear and transparent and appear to provide limited additional opportunity for simplification or efficiency. When reviewing any document, Pollution Probe recommends deleting wording that is not required or serves no specific purpose. To the extent that there is further enhancements that could add value, they are more likely related to

[10] This was recently done by the OEB panel in EB-2021-0002 and was helpful to all parties.

specific proceedings rather than the broader Intervenor process and cost award documents. Recommendations have been provided on potential enhancement opportunities for the OEB to consider in the future.

Comments Related to Specific OEB 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 processes on average over 300 applications each year and only a small portion (13% or 40/311) include participation by intervenors. This small number of interventions is due in part to prioritization and the focus of intervenors on applications of significant value and impact to their constituents. Given the value that accrues from participation, the OEB could consider how to create additional value by enabling participation in a greater number of proceedings.

   Recommendation: Leverage the value of Intervenors and other stakeholders earlier in the process to add value and avoid costs.

   It is becoming more common to see applications where stakeholder consultation was not done properly or in some cases not done at all prior to filing an application with the OEB[11]. This results in inadequate or incomplete applications, delays and more issues in a proceeding than would otherwise have existed. In some cases it results in rate payer funds being spent[12] when there is no need for the project or alternatives are more appropriate. The OEB should discourage expedited approval requests from applicants, particularly when the application is incomplete and consider options to ensure proper stakeholdering is conducted prior to filing an application with the OEB.

   Recommendation: Expand the value created from Intervenor participation beyond the small number of applications where Intervenors currently participate.

   The net reduction in rate payer costs due to Intervenor participation is significant and is supplemented by additional policy, public interest and societal benefits that are recognized. These incremental benefits for Ontario and its energy consumers may not be achieved in the applications where Intervenors do not participate. Considering options to leverage these benefits for a larger proportion of proceedings could significantly reduce overall rate payer costs and produce other net benefits.

[11] Many examples for both electricity and natural gas including EB-2021-0002, EB-200-0293 and EB-2021-0110.
[12] E.g. planning and Environmental Assessment costs

Recommendation: Continue or enhance the OEB engagement of Intervenors and other industry stakeholders on key issues facing the OEB on innovation and modernization.

Many issues facing the OEB and the future of Ontario's energy sector are complex and require innovative thinking to overcome established barriers. Several of the OEB's recent initiatives (e.g. RPPAG and DER Connects) have led to innovative solutions to long standing problems. There is significant opportunity to drive innovation and discussion of issues through this approach. Some issues may require a formal regulatory proceeding, but they should be leveraged in harmony.

Clarifying Application Expectations

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

Recommendation: Make pre-application meetings more inclusive and productive by inviting stakeholders such as relevant Intervenors.

The OEB has made pre-application meetings available for all electricity and natural gas cost-based rate applications, regardless of utility size. Pre-application meetings provide an opportunity for distributors to receive early feedback on their application prior to finalizing it. As outlined above, including relevant Intervenors in pre-application meetings with the OEB and applicant is the most effective way to identify significant issues prior to an application being filed with the OEB. Intervenor feedback based on a high-level presentation by the applicant would help reduce gaps and unforeseen issues. This could also easily be added by the OEB as a step in the Intervenor process and cost award guidelines.

Recommendation: Make post-proceeding meetings more inclusive and productive by inviting stakeholders such as relevant Intervenors.

The OEB has initiated post application debriefing meetings with applicants. In order to gain full value from a post application review meeting, the review session should invite all parties that participated in the application including the applicant. Only through a more inclusive process will incremental improvements be optimized.

Intervenor Status: Substantial Interest

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

Recommendation: It is not appropriate to narrow the definition of substantial interest for Leave to construct applications.

The OEB has defined an intervenor in a proceeding as someone who has satisfied the OEB that they have a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument, or interrogatories, or by cross examining a witness. This definition is best practice and represents Top Quartile standards. The current definition has been effective to enable the OEB to ensure that the right stakeholders can participate and has been used to refuse participation when appropriate.

Creating a more restrictive definition will limit participation by interested parties and restrict the ability of the OEB to ensure that relevant stakeholders are allowed to participate. It will also have the unintended consequence of decreasing the value currently provided by the Intervenor process. Leave to construct applications relate to a large range of stakeholders and policy. Policy, environmental and socio-economic impacts go far beyond the project right-of-way[13].

Recently, the OEB issued its Decision for gas IRP[14] that attempts to modernize the planning and alternative assessment for gas projects. The Leave to construct process was specifically identified as the only governance step available to the OEB and stakeholders to ensure the OEB's IRP requirements are appropriately applied.

Leave to construct applications represent only 3%-12% of intervenor cost claims and Intervenor participation generates significantly more rate payer cost reductions than the Intervenor costs to participate. Rate payer cost reductions due to Intervenor participation in Leave to construct applications has been hundreds of millions of dollars greater than the costs awarded to Intervenors, resulting in a significant net financial benefit[15]. Changes to criteria including those related to substantial interest for LTCs will

[13] For example, the EB-2020-0293 Leave to construct identified broad impacts of large diameter pipeline construction through a downtown city core, plus direct policy impacts that were deemed in scope by the OEB.
[14] EB-2020-0091
[15] Just a few examples below and many more are available if required.

1) In EB-2020-0065 a Rate payer cost of approximately $9 million (plus the environmental and socio-economic impacts) was avoided by Intervenor participation costing approximately $6,200. This is a 1450% return in favour of Rate payers. Additionally, the proceeding had the potential to set a precedent which could have resulted in $ billions in additional Rate payer costs.
2) In EB-2019-0159 A Rate payer cost of over $200 million was avoided by Intervenor participation costs of approximately $312,000. This is more than a 600% return in favour of Rate payers. This was contentious project in which Pollution Probe and others coordinated with local Rate payers to provide an opportunity to participate. Additional public interest, environmental and socio-economic benefits resulting directly from Interveor participation.

not have a material impact on Intervenor costs, but could impact the benefits currently achieved from the OEB's process.

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

Recommendation: No change recommended for substantial interest for rate applications.

The OEB has defined an intervenor in a proceeding as someone who has satisfied the OEB that they have a substantial interest and intends to participate actively and responsibly in the proceeding by submitting evidence, argument, or interrogatories, or by cross examining a witness. This definition is best practice and represents Top Quartile standards. The current definition has been effective to enable the OEB to ensure that the right stakeholders can participate and has been used to refuse participation when appropriate.

Creating a more restrictive definition will limit participation by interested parties and restrict the ability of the OEB to ensure that relevant stakeholders are allowed to participate. It will also have the unintended consequence of decreasing the value currently provided by the Intervenor process.

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

The current OEB application of substantive interest can be applied consistently to any OEB proceedings. Consistency is important. Defining it differently per type of application is not recommended since it would result in inconsistency, confusion and a less effective process. A change like this would be move away from the current best practice approach to a fragmented, inconsistent approach which is not representative of Top Quartile regulators.

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

Recommendation: Interveners only participate in a small fraction of OEB proceedings. The OEB could consider opportunities to remove barriers to encourage participation in a larger percentage of proceedings.

There are currently large hurdles and barriers that restrict broader participation in proceedings. Even when Intervenors are approved by the OEB in a proceeding, the risks and restrictions faced by Intervenors are greater than those faced by the applicant. For example, Intervenors are at risk for cost awards even when they act responsibly in a proceeding and clearly add value in relation to the Decision issue by the OEB[16]. The

[16] This often occurs when cost claims are compared to an arbitrary average that does not acknowledge the level of participation, evidence produced or how many issues were relevant to each party.

utility applicant does not face those risks. Additionally, the applicant typically has no limit on the resources they expend on evidence, consultants, lawyers for a proceeding. The rates paid by the applicant and the total costs typically far exceed those of Intervenors. **Recommendation: Consider the ability to track and report all direct and indirect applicant costs related to each proceeding.**

Rate payer costs related to Intervenors are a very small amount on a relative basis. The current process results in process bias in favour of the applicant since there is no costs accountability per proceeding. Requiring applicants to track and publish their full internal and external costs for a proceeding (including overhead costs) could help the OEB understand this discrepancy better.

Cost Awards

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

It is overly simplistic to generalize about Intervenor groups and interests. Real experience through proceeding has shown that there is unique value across different Intervenors that represent customer and/or policy interests in a proceeding and where areas of interest overlap among parties that this is coordinated in a very efficient manner.

Duplication of interests from a customer and/or policy perspective in a proceeding is not an issue today. Even in the largest and most complex proceedings stakeholders represent different perspectives and coordinate effectively to mitigate potential areas of duplication. This appears to be a perception issue rather than a real tangible issue. Pollution Probe has not seen duplication or overlap Intervenors which suggests that the level of participation and coordination on issues across stakeholders is effective and appropriate.

Changes that would artificially attempt to segment specific consumer and policy issues in a more granular manner would be deleterious to the regulatory process. Consumer and policy issues are intermingled in all applications[17] and it is not recommended to make changes that would decrease the effectiveness and benefits of the current approach.

Recommendation: Increase the OEB Comissioners' recognition and favorable consideration of Intervenor coordination and combined interventions.

Coordination on issues between parties can often be invisible to the OEB, but make no mistake that it is actively occurring to drive efficiency to proceedings. Similarly,

[17] It is evident is all proceedings, but Pollution Probe would use EB-2019-0294 as an example which included Rate payer, environmental and socio-economic impacts related to a Leave to construct that was predicated on a project to meet the policy objectives in the Ontario Environment Plan.

Intervenors typically coordinate with OEB Staff in a similar manner. Pollution Probe has often been contacted by OEB Staff during proceedings to share considerations or reduce duplication and Pollution Probe understands that occurs with other Intervenors as well. Pollution Probe has taken significant efforts to coordinate and/or sponsor combined interventions in partnership with consumers or other stakeholders that would have otherwise intervened independently or not had an opportunity to participate. Although the OEB Rules encourage this, it is rarely recognized by the OEB. Even in cases where a combined intervention approach has been used, the OEB appears to assess costs against the average which is a barrier to enhanced coordination and combined intervention. There is no Rule change required, but Commissioners could be encouraged to recognize these efforts more visibly.

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

There are circumstance where for profit interests should be eligible for cost awards. The definition of for profit does not mean that the stakeholder has the financial capability to participate in a proceeding, even if they represent an interest in the proceeding and could bring significant value to the OEB in their participation. Pollution Probe encourages the OEB to add this type of scenario to its Rules,

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

Challenges still exist for the OEB to effectively communicate and engage with all relevant stakeholders, including individual rate payers. There are still stakeholders that have trouble engaging in the OEB processes and some of these have reached out to Pollution Probe to partner for proceedings that significantly impact them. The OEB has been taking action to close these gaps where possible, but more is needed. An example related to community engagement is highlighted in recent OEB RPPAG Report. It is important that the OEB recognizes that typical consumers have trouble navigating OEB processes and terminology. It is essential that the OEB use common language when communicating and engaging with Ontario consumers and/or communities.

Pollution Probe has invited the OEB to participate or present at various consumer, community and stakeholder sessions and there does not appear to be a clear and consistent approach for the OEB to assess and approve participation. Results have been mixed. This creates a barrier to the OEB engaging outside of proceedings and a perception that it is unwilling to engage with Ontario consumers and communities on important issues and proceedings.

Recommendation: Increase the number of stakeholder communication and engagement sessions outside of a specific regulatory proceeding. This includes with Intervenors, energy consumers and Ontario municipalities.

Frequent Intervenor Filings

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

The current annual filing process and requirements is sufficient to drive the value needed. Annual Intervenor filings provide value in that they reduce the duplication of information that would need to be provided and also provide a transparent view on the public record of frequent intervenors and the interests that they represent. This has an ancillary benefit of promoting parties to collaborate or coordinate joint interventions which is a goal of the OEB.

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?

Recommendation: Ensure that the OEB provides an opportunity for Intervenor experts to participate and be compensated commensurate on the same basis as applicant experts.

It is not visible to the OEB the cost of resources that an applicant deploys on applications including expert consultants, lawyers, internal staff, etc. There is no requirement for an applicant to receive approval for their scope or costs of evidence prepared or filed. This does not create a level playing field and results in Intervenor experts being at a disadvantage when attempting to provide expertise in support of the proceeding.

Also, the rates paid by the applicant and the total costs typically far exceed those of Intervenors and OEB Staff. This results in an information and process bias in favour of the applicant. Requiring applicants to track and publish their full internal and external costs for a proceeding (including overhead costs) could help the OEB understand this discrepancy better. Furthermore, Intervenors do not control all aspects of costs related to expert witnesses. If there are more interrogatories than expected, more technical conference questions and more time dedicated to a hearing (including undertakings), the costs can easily exceed the estimates provided to the OEB. This is not an issue for the applicant, but pose a significant issue for Intervenors and their experts. It is recommended that the OEB provide allowances above an initial estimate should time and costs related to the proceeding exceed the original estimate.

Recommendation: Require an applicant to file all relevant studies and expert evidence it has in the original application and discourage creation of reply evidence that should have been included in the initial application.

In some applications it has become evident that additional back pocket expert studies were conducted and not filed with the application. These studies were later discovered through interrogatories or filed by the applicant as Reply Evidence. This is not a

transparent or efficient practice. Requiring that all relevant evidence is file in the original application would reduce duplication, the number of interrogatories and improve the quality of discovery and decisions. Reply evidence is not meant to fill gaps that should have been addressed in the original application. When the OEB approves Intervenors to retain experts to fill evidence gaps or provide a balanced perspective on relevant issues, it can be duplicative for the applicant to then spend additional rate payer funds on Reply Evidence on the same topic. This approach should be discouraged by the OEB. If the original applicant evidence is complete, sound and objective, it could reduce the need for Intervenor experts to be retained.

Active Adjudication

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

Recommendation: It is recommended that the OEB establish a forum outside of proceedings to discuss relevant industry issues with Commissioners and to share information and opinions. This could include regular forums by topic area to discuss challenges and opportunities in Ontario.

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?

Proceedings that include a step in the process to provide feedback on a draft issue list help to clarify the scope of the proceeding, which ensure that all relevant issues are included in scope. This is often done in rate cases and has been effective. This approach could be considered for other types of proceedings.

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?

Recommendation: A systematic review and update of all OEB guidelines, policies and procedures to ensure that they represent best practices is valuable.

An example of an OEB guideline that is currently out of date and requires attention is the OEB's Environmental Guidelines[18]. It is not functioning effectively or in alignment with similar standards and outcomes for environmental assessment (EA) processes. Historically, applications were not allowed to proceed unless effective stakeholder consultation was completed, including the Ontario Pipeline Coordination Committee

[18] OEB Environmental Guidelines for Location, Construction and Operation of Hydrocarbon Pipelines in Ontario, 7th Edition, 2016

(OPCC) review and comment process. More recently, the application of negative confirmation[19] (i.e. assumed endorsement or approval without receiving a positive confirmation) has been accepted by the OEB and is not an appropriate approach[20] for agency and stakeholder consultation. This approach has led to significant delays, costs and other negative impacts[21].

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

Recommendation: Conduct consultation prior to establishing a generic proceeding to determine the linkages with other OEB policies, frameworks and decisions. This will help identify interdependencies and ways to deal with them in the Issue List.

The energy industry and issues facing the OEB and Ontario are complicated and interlinked. It is very rare to hold a proceeding that is not impacted in some way by issues in another proceeding. Modernization and innovation require a more flexible approach to break down silos and ensure that the comprehensive framework works together to meet Ontario's future needs in the energy transition. This exact issue came up in the OEB's Future of Energy Innovation Working Group and it has surfaced in recent proceedings as well[22].

Similarly, settlement conferences provide value and generate significant net cost benefits for rate payers, but they are also not fully transparent to the OEB Commissioners. Finding opportunities to ensure that Commissioners are exposed to issues without breaking confidentiality rules would help educate them and ensure that they are aware of key issues and their impact.

[19] For example in EB-2021-0205 less than 10% of review agencies provided confirmation of a completed review.
[20] Positive confirmation is a standard approach for environmental assessment processes at the Provincial and federal level. Gaps in filing positive confirmation with a Leave to construct application have led to significant issues including a project cancellation in EB-2020-0198. Negative confirmation has not been acceptable by regulators including the OEB which recently supported positive confirmation in EB-2019-0194 Settlement Proposal Decision, page 4.
[21] Examples include lack of consultation and approvals that led to a Section 101 application and project removal in EB-2020-0160 and recently an adjournment to EB-2020-0293 due to OPCC member (MTO) comments not properly considered or included in the application. Lack of positive confirmation with approval agencies also led to cancellation of a Leave to construct project in EB-2020-0194.
[22] For example, the 2023-2027 DSM Framework being considered in EB-2021-0002 cannot be considered a silo from the gas IRP requirements established in EB-2020-0091 since they both target the same customers and demand side management technologies.