



April 29, 2022

**VIA RESS**

Ontario Energy Board  
P.O. Box 2319,  
2300 Yonge Street, 27th Floor  
Toronto, ON M4P 1E4  
Attention: Registrar

Dear Ms. Marconi,

**Re: Framework for Review of Intervenor Processes and Cost Awards  
Board File Number: EB-2022-0011**

We are counsel to the Electric Vehicle Society (**EVS**) in the Framework for Review of Intervenor Processes and Cost Awards consultation (the **Consultation**). EVS submits its comments on the Consultation and the Board's March 2022 report (the **Report**) pursuant to the Board's letter of March 31, 2022.

**Electric Vehicle Society**

EVS represents over 1,000 end-use, largely residential, individual electric vehicle (**EV**) electricity customers, which all pay membership fees to have their needs and preferences related to EVs and related distributed energy resources (**DERs**) represented on matters that directly substantially impact them. EVS has 12 local chapters of electricity rate paying customers in Ontario. EVS is governed to ensure that individual rate payers are informed, consulted, and can independently raise their needs and preferences on matters of direct and substantial interest with the leaders of their local EVS chapters, and all such needs and preferences are communicated to and through the President of EVS. Those customer needs and preferences are aggregated and conveyed to jointly formulate positions through the President of EVS. In this manner, EVS reflects the public interest in electrified transportation and DER matters. Further information on EVS, its more than 1,000 individual residential rate paying members, and its programs and activities may be found on its website at [www.evsociety.ca](http://www.evsociety.ca).

EVS's comments on the Consultation are focused on two areas: (i) oversight of scope of proceedings and (ii) cost awards.

**Oversight of Scope of Proceedings**

*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?*

The Board notes in the Report that it is considering tools such as scoping proceedings prior to granting intervenor status, especially where broader policy issues are raised. EVS is generally

supportive of ensuring that the scope of a hearing and material issues is clear and appropriately defined. However, EVS cautions against unduly restrictive scoping that limits interventions on policy issues that affect energy users and generators within the context of an instant proceeding, without giving intervenors seeking to raise such issues the opportunity to be heard. The scoping of proceedings earlier on in the process runs the risk of excluding important issues from consideration before intervenors are given the opportunity to raise such issues and demonstrate their relevance to the proceeding at hand. This would run contrary to the rules of procedural fairness and natural justice, and the principle of *audi alteram partem*.

EVS submits that the Board is more likely to make decisions in the best interests of all stakeholders when it ensures that the diverse views of intervenors form part of the record of a proceeding and intervenors are able to test and lead evidence to support their substantial interest in the proceeding, whether or not such interest includes broad or specific policy goals. EVS notes that intervenors that account for policy issues in the context of leave to construct and rates proceedings assist the Board in developing a deeper understanding of the impacts of its decisions on all stakeholders and rate payers.

### **Cost Awards**

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

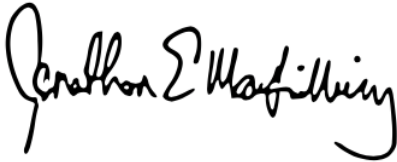
The Board proposes in the Report that it may consider pilot approaches to cost awards that encourage greater collaboration, for example, by approving costs for intervenors of similar interests as one entity with a maximum number of hours shared by the group. EVS is generally supportive of encouraging collaboration and coordination between intervenors with similar interests or where policy interests and goals generally align. However, EVS does not support requiring intervenors to join other intervenors with a maximum number of hours shared between them. Such an approach is likely to be inefficient in terms of time taken to agree on joint approaches and interventions, limit the proper application of the principles of procedural fairness and *audi alteram partem*, and generally constrain the sharing of the evidence, policy interests, and unique perspectives of each separate intervenor with the Board.

Mandating unassociated intervenors to work together, regardless of how similar their interest may be perceived to be by the Board, will also likely require overly restrictive guidance and rules with respect to mandated joint interventions, sharing of costs and resources, and other matters. EVS is of the view that separate intervenors *a priori* have separate and unique interests and goals, which could be compromised in a mandated joint intervention. Many intervenors that have come before the Board are already coalitions, consortia, or industry associations that have done a significant amount of work to align views and interests among their members. EVS itself often intervenes in Board proceedings as a member of the Distributed Resource Coalition. EVS recommends that the Board facilitate self-directed collaboration among intervenors and avoid Board-directed collaboration.

EVS is broadly supportive of re-evaluating the current cost award tariff (presently Appendix “A” to the Practice Direction on Cost Awards), which has not been materially updated in approximately one and a half decades, to take into account rising costs of legal and consulting services. EVS notes that the cost award tariff does not take into account the actual costs incurred by intervenors when selecting and making use of legal counsel and consultants, a right inherently supportive of the principles of procedural fairness. EVS notes that many intervenors are unable to participate or meaningfully engage in Board proceedings without obtaining specialist regulatory

legal counsel and often the actual legal costs incurred greatly exceed those recovered through the cost awards process. The Board may wish to consider, during the Consultation or as part of a specific stakeholder discussion, a minimally interventionist approach to regularly update the cost award tariff and endeavour to ensure that it is updated, at minimum, in accordance with market trends and inflation.

Sincerely,

A handwritten signature in black ink that reads "Jonathan McGillivray". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

Jonathan McGillivray

c. Wilf Steimle, EVS