



12 July 2022

Ms. Nancy Marconi  
Registrar  
Ontario Energy Board  
2300 Yonge Street, Suite 2700  
P.O. Box 2319  
Toronto, ON M4P 1E4

Dear Ms. Marconi,

**Re: EB-2022-0028 — EPCOR Electricity Distribution Ontario Inc., Cost of Service Application — Objection to Intervenor Request by SBUA**

#### OVERVIEW

On 4 July 2022, Small Business Utility Alliance (SBUA) applied for intervenor status in the above matter. EPCOR has asked that the Ontario Energy Board (OEB) deny this request, arguing that SBUA has not met the burden under Rule 22.02 of the OEB Rules of Practice and Procedure, which reads:

22.02 The person applying for intervenor status must satisfy the OEB that he or she has 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.

SBUA respectfully submits that EPCOR has misunderstood SBUA's mandate — asserting that SBUA “[does] not represent small business interests who are served by EPCOR” — and has erroneously concluded that SBUA does not have a substantial interest in this proceeding.

#### SUBSTANTIAL INTERESTS REPRESENTED BY SBUA

SBUA's mandate is “to represent, protect, and promote the interests of small businesses as utility customers of electric, natural gas, water, and telecommunications services before administrative and regulatory bodies on utility and energy matters” throughout Ontario.<sup>1</sup>

Whether EPCOR serves specific members of SBUA — members who may join or leave at any time — is immaterial. SBUA need not have local businesses as members to demonstrate its substantial interest in the proceeding. Indeed, the OEB has not required other regular intervenors to prove that they have individual members who are customers of the applicant

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<sup>1</sup> Appendix A, “First Amended Constitution and Governing Rules of Small Business Utility Alliance” (effective 1 December 2020), Art. II (emphasis added).

utility. It is enough for prospective intervenors to show that they represent a broader constituency (*i.e.*, small businesses in Ontario) which has an interest in the proceeding.

In fact, such a limitation on the scope of SBUA's mandate would contradict its purpose. The SBUA Constitution specifically provides that "[t]he organization's object is to advocate for the broader interests of the small business community as a whole and not the specific or direct financial interests of individual small businesses or the members of our alliance".<sup>2</sup> If SBUA were to intervene only when the direct financial interests of its members were affected — *i.e.*, only when its members included clients of the utility company in question — SBUA would violate its own governing documents and fail in its mission to represent the interests of the Ontario small business community more broadly.

Unless EPCOR takes the position that it does not serve small businesses — a position which we do not understand EPCOR to be taking — the reality is that SBUA most definitely represents "a constituency that is directly impacted by the application".<sup>3</sup>

#### EFFECTIVE REPRESENTATION OF THAT CONSTITUENCY

As to EPCOR's concern that there must be "an effective means to obtain instruction and direction from representatives of that constituency",<sup>4</sup> SBUA's regular activities primarily consist of outreach and education initiatives which provide a two-way flow of information to and from small businesses in Ontario.

Indeed, SBUA has already reached out to over 40 small businesses in EPCOR's territory, including in Collingwood, Creemore, and Stayner, Ontario. If granted intervenor status, SBUA intends to continue conducting direct consultations with local businesses in the affected area, as well as with local chambers of commerce and business improvement associations, in order to ensure that the positions SBUA takes in the proceeding are tailored not only to concerns common to all small businesses in Ontario, but also to specific local concerns.

#### INTERESTS OF JUSTICE

EPCOR correctly notes the importance of efficiency in proceedings before the OEB. That is precisely why a non-profit, public interest organization like SBUA is well-suited to intervene on behalf of the broader community of small businesses — a community which is historically underrepresented in utility matters, and has been made particularly vulnerable by the events of the last 2.5 years.

SBUA also notes that it is the only intervenor to appear in OEB proceedings which represents and serves the interests and needs of small businesses in particular. This is in contrast to many other regular intervenors, whose constituencies overlap.

Moreover, SBUA has proved, through its interventions in other proceedings to date, that it conducts its interventions in an efficient manner which avoids duplication with positions asserted by other intervenors and is narrowly focused on protecting and promoting the interests of small businesses in Ontario.

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<sup>2</sup> *Ibid* (emphasis added).

<sup>3</sup> Letter from Daniela O'Callaghan to Nancy Marconi (6 July 2022) at p. 2.

<sup>4</sup> *Ibid*.

Thus, as SBUA has a substantial interest in the proceeding by virtue of its province-wide constituency, as it intends to participate actively and responsibly (a point which EPCOR does not contest), and as it serves the interests of fairness and efficiency, SBUA should be allowed to intervene in this case.

Yours truly,

A handwritten signature in black ink that reads "Ryan Pistorius". The signature is written in a cursive style with a long, sweeping underline.

Ryan Pistorius

CC: Myriam Seers, Savoie Laporte LLP  
Sebastián Melo, Savoie Laporte LLP  
James Birkelund, Energy and Environmental Law Group  
Britt Marra, Small Business Utility Alliance

# **APPENDIX A**

# FIRST AMENDED CONSTITUTION AND GOVERNING RULES OF SMALL BUSINESS UTILITY ALLIANCE

## ARTICLE I NAME

The name of the unincorporated organization is *Small Business Utility Alliance*.

## ARTICLE II OBJECTS

The specific purpose of the organization is to represent, protect, and promote the interests of small businesses as utility customers of electric, natural gas, water, and telecommunications services before administrative and regulatory bodies on utility and energy matters. The purpose of this unincorporated organization generally will be to carry on other activities associated with the aforementioned goals as allowed by law. The organization's object is to advocate for the broader interests of the small business community as a whole and not the specific or direct financial interests of individual small businesses or the members of our alliance.

## ARTICLE III MISSION

The core of the organization's mission is to ensure fair and reasonable energy costs for small businesses, promote utility programs that help small businesses, support Canada's and its provinces' progressive energy and climate change policies, and expand the options for small businesses to participate in clean energy, distributed energy, demand response, and other utility initiatives.

## ARTICLE III NONPROFIT CLAUSE

The organization will be operated without purpose of gain for its members, and that any profits or other assets of the organization will be used solely to promote its objectives.

## ARTICLE IV GOVERNING BODY

The structure of the organization's governing body will be comprised of selected individuals who will serve on a Steering Committee to make decisions. The Steering Committee may delegate certain tasks and decision-making authority to a manager or legal counsel for purposes of regulatory advocacy or otherwise. The organization and Steering Committee may use advisors to assist in decision-making. The organization may replace its Steering Committee members by a vote of its organizational members or by appointment by existing Steering Committee members.

ARTICLE V  
MEMBERSHIP AND CONSTITUENCY

The organization seeks and welcomes members that are small businesses interested in utility and energy matters. The organization also may accept members that are nonprofits or larger entities with a mission or interest in small business utility concerns. A member may resign at any time with or without cause.

ARTICLE VI  
EFFECTIVE DATE

This First Amended Constitution shall be effective as of December 1, 2020.