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October 16, 2013

Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: Further Submissions of Low-Income Energy Network on Stakeholder Conference Issues (First Phase)
Board File No. EB-2013-0301 - Review of Framework Governing the Participation of Intervenors in Board Proceedings**

We are counsel for the Low-Income Energy Network (LIEN).

LIEN provides submissions below on the issues that arose during the Stakeholder Conference on October 8, 2013.¹ LIEN attended the Stakeholder Conference by teleconference. LIEN's comments below are further to LIEN's submissions in LIEN's letter dated September 27, 2013.²

BUDGETS

The participants in the Stakeholder Conference discussed whether budgets for intervenors should be implemented in some or all Board proceedings.

Some participants recommended that where budgets are required, intervenors must be able to amend and update their budgets based on the evidence tendered and other developments that may arise during the course of a proceeding.

¹ As per the Board's directions in the Board's letter dated August 22, 2013 at p. 4.

² LIEN appends to this submission a letter from Housing Services Corporation (HSC), Co-operative Housing Federation of Canada, The Agency for Co-operative Housing and the Ontario Non-profit Housing Association (ONPHA) dated September 27, 2013. LIEN appended this letter to LIEN's previous submission dated September 27, 2013. LIEN has re-appended this letter to this submission because the four entities above also support this submission.



Some participants in the Stakeholder Conference suggested that the budget envelope approach is impractical due to the (1) complexity of most proceedings, (2) inability to predict issues and the level of effort required by intervenors before a proceeding commences, and (3) administrative burden that budgeting would place on intervenors and the Board (several referred to the previously-encountered issues with the *Intervenor Funding Project Act*³).

LIEN submits that the Board should continue to require pre-approved budgets in only very limited cases where the proceeding is routine with standard issues. What appears to be a routine proceeding may become more complex during the proceeding and pre-set amounts may need to be adjusted accordingly. As well, certain proceedings may settle quickly and the pre-established amounts may be too high. Because of these concerns, LIEN is cautious about offering support for pre-approved budgets or pre-established amounts for hearing activities. Those hearings that are more complex, contain new issues to address, or include some combination thereof may not be suitable for pre-approved budgets or pre-established amounts. In most cases, pre-approved budgets are not appropriate due to the usually complex set of issues in Board proceedings, and the administrative burden on the Board and intervenors that managing the setting and modification of pre-established budgets would entail.

COST CAPS AND COST-EFFECTIVENESS

The participants in the Stakeholder Conference also discussed whether cost caps for intervenors should be implemented in some or all Board proceedings.

Some participants suggested that cost caps may be suitable for policy proceedings but not for hearings.

LIEN supports this position. LIEN submits that the Board should continue to implement cost caps only for those proceedings that involve straight-forward and non-complex issues, particularly non-complex policy matters requiring written submissions. Within such proceedings, LIEN recommends that the Board allow for additional costs required by many intervenors, like LIEN, to consult (more than usual) with internal steering committees in developing positions and submissions. LIEN finds that policy matters often require more consultation and internal discussion than non-policy hearings within an intervenor group. Where costs are limited to preparing submissions, such cost caps may not cover time required to fully review and discuss the issues and positions internally.

³ See Stakeholder Conference Transcript at p. 111 (lines 1 and 2; Patrick Hoey for Large Distributors warns of the cost consequences encountered during the *Intervenor Funding Project Act* days due to pre-approved budgets), p. 150 (lines 18 to 24; Tom Ladanyi of OPG supports the current intervention process, contrasting with the days of the *Intervenor Funding Project Act*), p. 163 (lines 1 to 12; David Poch for GEC reminds the participants that the process under the *Intervenor Funding Project Act* was cumbersome and costly).

LIEN supports the submissions of CCC, SEC, APPRO, Energy Probe and VECC on cost-effectiveness. Intervenors in Board policy proceedings and regulatory hearings have been highly effective in managing costs, while providing a high degree of value to the Board. LIEN concurs that the \$5.5 million awarded to intervenors in 2012 is immaterial in the context of the collective revenue requirement of the utilities that the Board regulates. As SEC submits "(a)t less than \$.41 per capita in Ontario last year, the cost of intervenors is lower than virtually any other jurisdiction in North America that has ratepayer advocacy in energy regulation."⁴

In the absence of cost awards, LIEN could not participate in Board proceedings. Typically, cost awards in policy proceedings do not cover LIEN's total costs of intervention, the balance of which is volunteer time of LIEN's members, consultants, and legal counsel.

ROLE OF BOARD STAFF

During the Stakeholder Conference, participants expressed confusion over Board Staff's role in Board proceedings. Participants suggested that Board Staff's role is sometimes limited to testing the evidence, while other times Board Staff takes a position.

LIEN supports the comments of Large Distributors, in so far as Board Staff should be required to state, at the outset of a proceeding, the primary role Board Staff intends to take in a proceeding, so that the other parties understand Board Staff's role, and can plan their interventions (interrogatories, cross-examinations and arguments) accordingly.⁵ When Board Staff assumes this role (completion of the record and testing of evidence) other intervenors can focus on their particular issues. This focusing streamlines the hearing and helps the Board to clarify intervenor positions.

LIEN supports the position of many parties that Board Staff should declare at the outset of a proceeding the role Board Staff will take.

LIEN also encourages Board Staff to take the role to test evidence and to fill gaps that intervenors haven't covered. This may be best achieved in hearings by having Board Staff go last in cross-examination. Conversely, LIEN sees value in having Board Staff go first in cross-examination, to narrow the length of cross-examination by intervenors. This will help intervenors by providing guidance on what is in- and out-of-scope and will save time and effort. LIEN submits that, where Board Staff think appropriate, Board Staff could go both first and last in cross-examination.

⁴ SEC Submission, First Phase, dated September 27, 2013, at p. 8.

⁵ See Stakeholder Conference Transcript, p. 95, line 22 to p. 96, line 9.

LIEN submits that the only time Board Staff needs to, or should, take a position in a proceeding is where there are few to no intervenor participants.⁶ Where many intervenors are involved, there is no need for Board Staff to take a position, as the many stakeholders involved will provide a diverse representation of interests before the Board. In such cases, Board Staff's role should be limited to testing the evidence, guiding the Board on its jurisdiction, and filling any gaps not covered by intervenors. In such cases, Board Staff should be careful to limit their arguments and cross-examination in a way that clarifies the issues before the Board and provides neutral advice to the Board, and avoids promoting a specific position (in a way that supports or does not support the applicant's case).

COMBINING INTERVENTIONS AND NEED FOR DIVERSITY AT THE BOARD

During the Stakeholder Conference, some utility participants expressed support for the combination of interventions as an efficiency and cost-saving measure. LIEN disagrees with this position.

LIEN submits that forcing intervenors to combine interventions would be unfair to intervenors and would unduly limit their effectiveness in assisting the Board in making an informed decision. LIEN concurs with SEC that:⁷

The Board already has rules prohibiting unnecessary duplication and inefficiency, and those rules are working. Further restrictions on ratepayer representation would be fundamentally unfair, and of no actual benefit to the process.

LIEN also agrees with HONI's statement:⁸

The Board should continue to encourage intervenors to work cooperatively, whenever possible. Beyond that, implementing mechanisms to force cooperation among intervenors would be a challenge and the Board ought to be wary that such mechanisms not interfere with due process.

LIEN supports the notion that forcing intervenors to combine interventions may, in some cases, interfere with due process and cause procedural unfairness. This may be particularly evident where two intervenors with overlapping interests are forced to combine interventions addressing issues for which those intervenors have divergent positions. Such a scenario would deny those

⁶ Historically, Board Staff began to take positions to assist the Board, especially in proceedings, such as facility applications, where no or very few parties intervened. Such proceedings involved (1) Board Staff who acted exclusively as advisors to the Board (and had counsel), and (2) other Board Staff who took a position (and had counsel). Over time, the Board advisor and Board counsel roles were eliminated in favour of the present dual role, which can lead to confusion.

⁷ SEC Submission, First Phase, dated September 27, 2013, at p. 27.

⁸ HONI Submission, First Phase, dated September 27, 2013 at p. 3.

intervenor their rights to a fair opportunity to affect the outcome of the proceeding, which in turn may affect the intervenors' constituents.

LIEN submits that the Board should continue with its existing position: use settlement conferences, and allow intervenor positions to evolve and joint interventions on specific issues to emerge through the course of a proceeding. Combinations of interests/joint interventions should emerge as appropriate as the proceeding progresses, facilitated by a settlement conference, if necessary.⁹

LIEN, for example, collaborates where appropriate with groups with similar interests such as VECC and FRPO, on low-income DSM matters. LIEN submits that intervenor groups are not identical, and while there may be some overlap in interests between groups, there are often marked differences. This could, and often does, result in agreement on some issues, and disagreement on others, within the same proceeding. To be forced to combine interventions in proceedings may result in procedural unfairness, as there are sufficient differences in membership between intervenor groups. Such differences warrant separate representation. Many intervenors support the notion that a diversity of intervenors allows for a diversity of views at the Board. Peter Thompson for CME put it best during the Stakeholder Conference:¹⁰

But I do say the Board should recognize and accept that there is a diversity of interests, intervenor interests, that can be similar in some respects and dissimilar in other respects. And I say the Board should be encouraging that diversity, not stifling it, as others seem to be proposing by suggesting that groups be combined by Board mandate.

LIEN also strongly supports having a diversity of interests before the Board. LIEN echoes the comments of other intervenors as described above. Having a variety of intervenor groups actively involved in a proceeding allows for representation of a diversity of interests, and is an integral part of the Board process. The balancing achieved through such diverse interests leads to more informed decision-making in the public interest.

⁹ AMPCO submitted that positions are arrived at by intervenors through the process of discovery; testing of propositions by a range of parties leads to better outcomes. See AMPCO Submission, First Phase, dated October 2, 2013 at p. 3. LPMH submitted that "The Board requires a broad range of interests to be represented and benefits from the diversity of views and approaches brought by different intervenors to the table.." See LPMH Submission, First Phase, dated September 27, 2013 at p. 13.

¹⁰ Stakeholder Conference Transcript at p. 142, lines 13 to 19.

INTERROGATORIES

During the Stakeholder Conference, some utility participants suggested that duplicative interrogatories are a cost and time burden on utilities.

If a particular utility has issues with the duplication/overlap of particular interrogatories, which require more effort than simple cross-referencing of responses, there are informal means of addressing this with the particular intervenors. If the interrogatories involved require more time for the utility to respond, the utility can always request some additional time to address them. If the utility finds that the burden this has caused the utility is undue, the utility can so advise the Board during the cost award process, and request/suggest a remedy.

LIEN is aware that intervenors work hard to avoid duplication. However, there is always room for improvement. With a Board Staff role focused on completion of the record, gap-filling and clarifying issues, Board Staff could take a leadership role in facilitating the resolution of any major duplication of interrogatories.

Notwithstanding that there may be room to reduce duplication of interrogatories, LIEN submits that there is great value in having intervenors individually submit interrogatories, particularly during complex proceedings. LIEN submits that only in allowing intervenors with diverse interests to do so is the applicant's evidence truly tested. A robust interrogatory process provides the foundation for a full cross-examination and secondary round of testing the evidence.

GREATER TRANSPARENCY IN COST AWARD FILINGS TO DEMONSTRATE TO BOARD EFFICIENCIES IMPLEMENTED BY INTERVENORS

During the Stakeholder Conference, CCC and SEC commented on the need for intervenors to provide greater transparency to the Board. CCC and SEC suggested that intervenors could show this through their cost award request letters. Intervenors could cite areas within the proceeding where intervenors collaborated to avoid duplication, and took leadership or secondary roles to be more efficient in their interventions.

LIEN supports this approach to increased transparency. Particular intervenors often take the lead on certain matters because of expertise, experience and interest. This approach has served the intervenors well as such a lead has been helpful in exploring, analyzing and resolving issues; it has led to more efficient, effective and cost-effective interventions by all intervenors and this approach has been helpful to the Board. Any approach adopted by the Board for administering cost awards should continue to allow this flexibility in intervenor leadership. If greater transparency about what roles intervenors took in a proceeding and how intervenors communicated during a proceeding will assist the Board, LIEN supports intervenors including a

brief description of this in cost award letters. LIEN points out that LIEN and many other intervenors already do so.

CONCLUSION

LIEN generally supports the existing regime for intervenor status, cost award eligibility and cost awards. Most participants in this proceeding (with the exception of some utilities) agree, and support the existing regime as one that balances efficiency with the need to have diverse positions explored in proceedings.¹¹

LIEN submits that the principles set out in E.B.O. 116 (1985 Board decision), principles that support the Board's cost award process, are helpful and still relevant in guiding the Board in this proceeding. These principles are (1) complex issues require representation of a broad range of interests, (2) financial barriers must be removed to allow meaningful intervention, and (3) Board decision-making requires a flow of high quality information, which can be achieved through intervenor participation. In LIEN's view, these principles still apply today, and should be kept as guiding principles for the cost award process.

LIEN submits that the existing regime for intervenor participation allows the Board to fulfill its objectives under sections 1 and 2 of the *Ontario Energy Board Act, 1998*.¹² The existing regime allows intervenors whose constituents, including consumers, land owners, environmental groups, and others that are affected by the electricity and gas services regulated by the Board, to participate in Board proceedings that may affect those constituents.

Yours truly,



Matt Gardner

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¹¹ LIEN supports David Poch for GEC's submission in the Stakeholder Conference that "there has to be a bit of duplication tolerated". See transcript at p. 163, lines 20 to 25.

¹² S.O. 1998, Chapter 15, Schedule B.



Co-operative Housing
Federation of Canada

September 27, 2013

Ontario Energy Board
2300 Yonge Street
Suite 2700
Toronto, ON M4P 1E4

Attention: Kirsten Walli, Board Secretary

Dear Ms. Walli:

**Re: First Phase Submissions of Low-Income Energy Network
Board File No. EB-2013-0301 - Review of Framework Governing the Participation
of Intervenors in Board Proceedings**

Please accept this letter in support of the Low-Income Energy Network submission referenced above. We appreciate the opportunity to assist the Ontario Energy Board to improve intervenor participation and Board proceedings and strongly support the direction herein.

Olga Tasci
Director, Operations
Directrice des Opérations
The Agency for Co-operative
Housing

Dale Reagan
Managing Director, Ontario Region
Co-operative Housing Federation of
Canada
Ontario Region Office

Sarah Baker
Director of Energy Services
Housing Services Corporation

Sharad Kerur
Executive Director
Ontario Non-profit Housing Association
(ONPHA)



The Agency for Co-operative Housing
L'Agence des coopératives d'habitation



ONPHA