

ONTARIO ENERGY BOARD

INTERVENTION PROCESS

GUIDANCE DOCUMENT

MARCH 2023



Ontario
Energy
Board

Purpose of this Document

The Ontario Energy Board (OEB) has prepared this document to provide guidance to persons interested in participating in a hearing as an intervenor. An intervenor is a person who wishes to participate in a hearing other than by simply filing a letter of comment, and who the OEB has determined has a substantial interest in the hearing. The OEB's [Rules of Practice and Procedure](#) set out the process for applying to be an intervenor, and this document provides guidance on meeting those requirements. For context, this document also provides a high-level overview of the OEB's mandate and the hearing process.

Mandate of the OEB

The OEB's mandate is to regulate Ontario's natural gas and electricity sectors. The kinds of applications that come before the OEB include:

- Applications by electricity and natural gas utilities to change the rates they can charge their customers;
- Applications by a utility for approval of mergers, the sale of assets or changes in ownership or control; and
- Applications for approval to build new electricity transmission lines or hydrocarbon/natural gas pipelines (referred to as "leave to construct")

In all of its work, the OEB is guided by objectives set out in legislation. Those objectives include protecting the interests of consumers, promoting cost-effectiveness and facilitating the maintenance of a financially viable sector.

More information about the above type of applications is available from the OEB's [Application Process](#) webpage.

Applications and the Hearing Process

When a regulated electricity or natural gas utility wants to change the rates that it charges to its customers or when a person wants to build a major new electricity transmission line or hydrocarbon/natural gas pipeline, it must apply for and receive approval from the OEB. OEB approval is also required for many mergers, acquisitions, amalgamations and divestitures of electricity or natural gas utilities or their assets.

When an application is filed, the OEB will consider the application in light of any relevant statutory test or OEB policies. In many cases it will hold a public hearing. The decision

on an application is made independently by a panel of Commissioners¹.

What is an Intervenor?

When the OEB holds a public hearing on an application, persons can apply to the OEB for permission to participate in the hearing if they have a substantial interest in the matter. Parties that have the OEB's permission to participate are called "intervenor".

Intervenors participate in many of the OEB's hearings and provide a diversity of views for the OEB to consider in assessing an application. Intervenors may assist the OEB by, for example:

- Reviewing a utility's application from the perspective of the stakeholders they represent
- Providing a diversity of views that would be difficult for the OEB to otherwise obtain

The OEB can place boundaries on the nature of an intervenor's participation (e.g., reducing the time for cross-examination during an oral hearing if the issue has already been adequately addressed by other parties or is not relevant). Such boundaries provide for an efficient hearing, avoids duplication of efforts, and ensures that issues pursued are within the scope of the hearing.

To ensure that funding is not a barrier to participation in our hearings, the OEB makes cost awards available to reimburse eligible intervenors for certain costs as set out in the OEB's [Practice Direction on Cost Awards](#).

What is a Substantial Interest?

A person has a substantial interest if they have a material interest that is within the scope of the proceeding; for example, a person that: (i) primarily represents the direct interests of consumers (e.g., ratepayers) in relation to services that are regulated by the OEB; (ii) primarily represents an interest of policy perspective relevant to the OEB's mandate and to the proceeding; or (iii) has an interest in land that is affected by the proceeding.

¹ Some applications are decided by OEB staff [acting under delegated authority](#), as permitted by section 6 of the *Ontario Energy Board Act, 1998*. These applications are often decided without a hearing.

How to Apply for Intervenor Status

Stakeholders who wish to participate in a hearing before the OEB can apply for intervenor status by filing the Intervenor Form with the OEB and serving it on the applicant or other party designated by the OEB, as applicable, by the date provided in the Notice of Hearing or Procedural Order. The OEB will consider late intervention requests, however, the OEB will generally not repeat any procedural steps that the late intervenor has missed.

Stakeholders applying for intervenor status must satisfy the OEB that they have a substantial interest and intend to participate responsibly in the proceeding. The Intervenor Form is intended to provide the OEB with information on which to make this decision. This includes providing information about who they are, how they have a substantial interest in the proceeding, their mandate and objectives, their governance structure, and their authorized representatives for the proceeding, if not already provided through a Frequent Intervenor Form filed with the OEB. They are also asked to provide details of:

- Their past participation in proceedings
- The specific issues that they are affected by
- Whether they intend to file evidence
- How they intend to coordinate with other intervenors with similar issues through the course of the proceeding
- Whether they have a preference for the format of the hearing (oral, written, or electronic)
- If they are requesting cost awards
- Whether they intend to participate in the proceeding using the French language

Further detail on each question, including information that does not need to be filed by an individual representing their own interest, is provided in the section below.

The Registrar normally makes a decision on requests for intervenor status and eligibility for cost awards in the first Procedural Order. The OEB can put conditions it considers appropriate on interventions. This can include limits on the number of representatives participating in a hearing and a requirement that they coordinate with other parties on common issues. The OEB can also deny a request for intervenor status if, for example, it is of the view that the party's interest in the proceeding is not sufficiently material to warrant intervenor status. If a party intervenes late in a proceeding, either the Registrar or the panel of Commissioners assigned to hear the case will determine whether a late intervention request will be granted and on what conditions.

Additional details on how to apply for intervenor status can be found in Rule 22 of the OEB's [Rules of Practice and Procedure](#).

A frequent intervenor is an intervenor who has participated in **three or more** adjudicative proceedings in the previous 12-month period. A frequent intervenor can file with the OEB a Frequent Intervenor Form so that the information required in Question 1 of the Intervenor Form, as described further below, does not have to be repeated in the application for intervenor status in each proceeding. If any of the information contained in the Frequent Intervenor Form has changed since it was filed, please file a revised form. As well, the parties that have filed a Frequent Intervenor Form will be added to the OEB's intervenor mailing list and will receive certain general and corporate correspondence that is issued to the sector directly. Frequent Intervenor Forms are posted on the OEB's [Annual Filings of Frequent Intervenor](#) webpage.

Instructions and Guidance on Completing the Intervenor Form

This section provides further information about each question on the Intervenor Form. In a number of cases, actual information provided by intervenors has been provided as examples of the types of responses that it is helpful for the OEB to receive. Note that these are provided as examples only, and the information provided by these intervenors may change over time.

For Persons Intervening to Represent their Own Interests: If you are representing your own interests as an individual customer of the applicant (e.g., ratepayer of a utility in a rates application or ratepayer in the service area of a utility in a merger, acquisition, amalgamation or divestiture application) or as an individual directly affected landowner in a leave to construct application:

- In completing part (ii) of Question 1, include your own contact information unless you are being represented or assisted by counsel or another person in the proceeding
- You do not need to complete parts (iii), (iv) or (v) of Question 1

Question 1

Please provide the information requested in parts (i) through (iv). Intervenor who have filed their Frequent Intervenor Form do not need to provide this information again and can instead provide a link to their Frequent Intervenor Form in response to part (v), unless any of the information has changed since the Frequent Intervenor Form was filed with the OEB.

i. Name of the intervenor

Example:

NAME

IGUA is the Industrial Gas Users Association

- ii. Name and contact information of no more than two authorized representatives, to be used for official communication purposes

The information provided (along with all of the other information provided in the intervenor form) will be available to everyone directly involved in the proceeding, including the applicant and other intervenors, and publicly accessible online. By providing your contact information and intervening in the proceeding, you are consenting to the OEB and any other party delivering documents and other information to you by email.

It is important that you provide the OEB with up-to-date contact information. If your contact information changes, you must advise the OEB and all parties in the proceeding immediately, or you may miss important information or notices.

- iii. Details regarding the:
- Mandate and objectives of the intervenor
 - Membership of the intervenor and the constituency represented. **Please do not provide the names of any individuals.** If the intervenor is comprised solely of individuals (for example a group of directly affected landowners) provide a general description of who the members are.
 - The types of programs or activities carried out by the intervenor

Example:

MANDATE AND OBJECTIVES

School Energy Coalition is a project administered by Ontario Education Services Corporation (OESC) on behalf of its five member organizations, plus Council of Ontario Senior Business Officials (COSBO) and Ontario Association of School Business Officials (OASBO).

Ontario schools spend more than \$500 million each year on the cost of energy, and more than 65% of that cost is established through rates regulated by the Ontario Energy Board. That includes gas distribution, electricity transmission and distribution, and the regulated payment amounts of Ontario Power Generation.

For each school board, the impact of regulation is big enough to be material, but the cost to acquire appropriate expert assistance, and to intervene in each of the rate and other cases that could have an impact, would be prohibitive. Further, each individual school board would have to develop its own internal expertise in the regulatory process. To the

extent that they couldn't, they would not be able to access the regulatory process as effectively...

Every school board in Ontario participates in the funding of SEC through an annual levy based on the relative square footage of their schools (as a proxy for energy use).

SEC has as its founding principle a three part approach to the regulatory process:

Always look for win-win solutions.

Think long term.

Walk softly but carry a big stick.

This is the core of the instructions SEC gives to its representatives. Based on this regulatory philosophy, SEC seeks to keep the costs to school boards for regulated services as low as possible, while maintaining good quality services and ensuring the long term sustainability of energy infrastructure.

Example:

MEMBERSHIP

The Consumers Council of Canada is open to application for membership by any individual who is a resident of Canada. However, the Council's board of directors must approve Council membership. This step is taken to ensure voting members of the organization are committed to the Council's mandate and objectives.

In addition, the Council engages members of the public through its Public Interest Network (PIN). PIN participants (currently 400 members) agree to make themselves available to the Council for the purpose of being queried about consumer issues. PIN participants form a national network of thoughtful, knowledgeable Canadian consumers. The Council consults the PIN online about important public and consumer policy issues being considered by government, corporations and consumer organizations. PIN volunteers get the satisfaction of knowing their opinions are heard and help improve the Canadian marketplace. Participation in the PIN helps the Council in its work on behalf of consumers in Ontario and across Canada.

Example:

CONSTITUENCY

AMPCO's members represent Ontario's major industries: forestry, chemical, mining and minerals, steel, petroleum products, cement, automotive and manufacturing and business consumers in general.

AMPCO members are major investors, major employers and a major part of the communities in which they operate, across Ontario. Membership is available for industrial companies with operations in Ontario and with minimum average monthly demand greater than or equal to 1 MW. AMPCO members generally account for approximately 15 TWh of industrial electricity demand in the province on an annual basis.

Example:

PROGRAMS AND ACTIVITIES

Pollution Probe has a broad program portfolio and is actively working with stakeholders, communities and policy makers on the transition in the energy system including issues such as regulatory sandboxes, low-carbon innovation, fuel switching, distributed energy resources, energy efficiency, community energy planning, infrastructure planning, transportation and related economic, environmental and health impacts. For example, we continue working on issues related to the effective introduction of EVs in Canada, and have been conducting research on innovation and regulated utilities, and the future of energy in a low carbon energy system. Part of our mandate is to enhance energy systems learning among stakeholders and the public, and to foster well-informed energy dialogues and decisions to help create societal or system benefits. We also run an energy literacy program that engages citizens and communities across Canada on the present and future of our energy system.

- iv. Provide a high-level description of the governance structure of the intervenor and how the intervenor's representatives will report to and receive instructions from the intervenor.

Example:

GOVERNANCE AND COMMUNICATION

Executive oversight of SEC is primarily the responsibility of the Executive Director of OESC. Direct responsibility for the SEC project is in the hands of [NAME]. The combination of an experienced CEO, and an experienced CFO, means that SEC's work, including that of its representatives, is closely monitored and controlled to ensure that it achieves its mandate while sticking to the core principles on which its work is based.

SEC reports to, and obtains feedback from, its members in five ways:

- *Quarterly, SEC provides a written report to each of its member school boards detailing the work done by SEC for that quarter. The quarterly report goes to the senior finance official, and the senior plant management official, of each school board, as well as to trustees and others who have requested to be included. It is also posted on the OESC website. Many school boards circulate the quarterly Status Report to a number of interested officials within their organizations.*
- *Annually, SEC provides a summary report to each of its member school boards along with its annual invoice for their contribution to the project. This usually includes a projection of key priorities for the coming year. This report goes to the CEO, CFO or equivalent of each school board.*
- *Annually, SEC reports to the OESC annual meeting. The heads of each of the seven member organizations are usually in attendance, and both the OESC Executive Director, and external SEC counsel, provide reports and respond to questions. Periodically SEC also reports at OESC board of directors meetings, on an as-requested basis.*
- *OESC management, and/or external legal counsel for SEC, regularly speak at conferences, seminars and meetings of the member organizations, particularly those dealing with plant management and finance issues.*

SEC also meets periodically with school board officials in geographic regions to discuss issues of concern to those school boards. These meetings will typically be timed to coincide with major upcoming proceedings that specifically affect those school boards. At those meetings, issues relating to gas and electricity distribution companies, transmission rates, and Ontario Power Generation rates, are usually all discussed. SEC external counsel is usually present at those meetings, as well as senior OESC staff.

- v. Link/upload to the intervenor's Frequent Intervenor Form, if filed with the OEB and up-to-date.

Question 2

Please list any OEB proceeding in which you have been granted intervenor status in the last 24 months. Please also list any instances in the last 24 months in which you have been denied intervenor status in an OEB proceeding. Please provide both the case number (EB number) and a short description of the application.

This information provides additional context for your intervention and allows the OEB to consider your participation in past proceedings as an indication of your interests and issues to inform a decision on potential involvement in this application.

Example:

GRANTED INTERVENOR STATUS

EB-2021-0110: Hydro One Joint Distribution and Transmission Rate Application

EB-2021-0243: Generic Hearing on Uniform Transmission Rates

DENIED INTERVENOR STATUS

EB-2022-0149: Milton Hydro's 2023 Cost of Service Rate Application

Question 3

Please describe how you are materially impacted by the proceeding. Where the proceeding has an issues list (including a standard issues list), please identify the specific issues from the issues list that you expect will be the subject of your intervention. Please refer to the [OEB's Performance Standard webpage](#) for more information about the scope of leave to construct and rate applications and the standard issues lists (where applicable) for these types of proceedings.

To the extent that you believe an issue that is relevant to and material in the proceeding is missing from the issues list, please describe it here. If you are a person participating in terms of a policy interest, you do not need to complete this question.

Example:

My name is _____ and I wish to be approved as an intervenor in Enbridge Gas Inc.'s application for leave to construct a natural gas pipeline in XX (EB-2022-XXXX). I will be affected by the outcome of this proceeding because the proposed pipeline will cross my property. I intend to raise the issues relating to the impacts that the construction of the pipeline may have on the farming operation I run on the property.

Question 4

To the extent that you primarily represent a policy interest (as opposed to, for example, ratepayers in a rates proceeding or directly impact landowners in a leave to construct proceeding), please identify the policy interest(s) in question, how they relate to the issues list (including a standard issues list) where there is one for the proceeding, and why that policy interest is relevant to and material in the proceeding. To the extent that you believe an issue that is relevant to and material in the proceeding is missing from the issues list, please describe it here.

Question 5

The OEB holds written, oral and electronic hearings. If you believe that there is a good reason for having a specific form of hearing, please identify and explain.

Question 6

Do you intend to file evidence in the proceeding? If you are unable to answer this question at this time, please indicate. If you are able to confirm at this time that you intend to file evidence in the proceeding, please provide the following:

- A high-level overview of the proposed evidence
- A description of how that evidence is relevant to and material in the proceeding
- An indication of how long it will take to prepare the proposed evidence
- If you are seeking eligibility for an award of costs, the expected cost of the evidence

Question 7

It is the OEB's expectation that intervenors will make reasonable efforts to coordinate their intervention with any other intervenors with similar interests. Please confirm that you understand that you will be expected to coordinate your participation with other intervenors with similar interests. To the extent you are able to answer at this time, please describe how you intend to coordinate your intervention with other intervenors with similar interests to avoid duplication of effort.

Question 8

Please indicate if you are applying for cost award eligibility. If you are applying for cost award eligibility, please identify the reasons as to why you believe that you are eligible for an award of costs, addressing the OEB's cost eligibility criteria set out in section 3 of the OEB's [Practice Direction on Cost Awards](#).

Note that the burden of establishing eligibility for a cost award is on the person applying for a cost award. A person found eligible for a cost award may not recover all the costs it claims. Consistency with the OEB's tariff, the conduct of the person during the proceeding, and the reasonableness of the final cost claim will be among the factors considered by the OEB, as outlined in the Practice Direction on Cost Awards.

If you are an individual intervenor representing only yourself, you will not generally be eligible for an award of costs. However, Rules 3.04 and 6.04 of the Practice Direction on Cost Awards allow, in appropriate circumstances, that an individual may be granted an honorarium or an award of cost for lost wages, respectively.

Question 9

Please indicate if you intend to participate in this proceeding using the French language.

How the OEB Assesses Requests for Intervenor Status

When determining whether to grant intervenor status to a person in a given proceeding, the OEB considers whether the person has a substantial interest in the matter being heard by the OEB. The OEB also considers whether the person's concern will be addressed within the scope of the proceeding.

Persons requesting intervenor status are expected to provide meaningful information in their Intervenor Form to aid the Registrar in making a decision. Failing to do so may result in a person being denied intervenor status.

If it is not clear whether a party's interest is within the scope of the proceeding, the Registrar may not be able to make a determination as to whether the party is accepted into the proceeding or denied intervenor status in Procedural Order No. 1. In rare instances, a decision on a person's request for intervenor status may not be able to be made until a panel of Commissioners has decided on a final issues list. The reason for this is that the person may be pursuing an issue that has the potential of not being within the scope of the proceeding. If the issue is not included in the final issues list, the person would be denied intervention status. However, if the issue were included, the person would be granted intervenor status.

Although the Intervenor Form requires a prospective intervenor to indicate if they are requesting an award of costs, it should be noted that the decision on cost award eligibility is distinct from the determination on intervention. There may be times where a person's concerns are within scope and the person has a substantial interest, but they are not eligible for costs under the OEB's [Practice Direction on Cost Awards](#). There may also be situations where the person's concern is within scope, but the OEB is of the view that the issue is relatively straightforward and it does not need to award costs in order to receive input from intervenors for making its determination.

Parties Generally Considered to have a Substantial Interest

There are certain types of intervenors that will typically be considered by the OEB to have a substantial interest in a specified type of proceeding:

- **Rates:** Representatives of ratepayers that represent ratepayers in the utility's service territory
- **Leave to Construct Applications (Hydrocarbon/natural gas pipelines):** Directly affected landowners; Indigenous groups that are potentially impacted by the project; and representatives of ratepayers for leave to construct projects by rate regulated utilities where costs will be borne by ratepayers

- **Leave to Construct Applications (Electricity transmission lines):** Directly affected landowners; and representatives of ratepayers for leave to construct projects by rate regulated utilities where costs will be borne by ratepayers
- **Mergers, Acquisitions, Amalgamations, and Divestitures (MAADs):** Representatives of ratepayers that represent ratepayers of a utility that is a party to the transaction

Note: The above listing is not exhaustive, persons are still required to provide an indication of their interests and concerns, and to specify the associated issue(s) on the issues list (where available) that they expect will be the subject of their intervention, on their Intervenor Form. Persons will not be granted intervenor status, even if noted on the above list, if they are only interested in issues that fall outside the scope of the proceeding.



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