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**VIA WEB POSTING**

**October 2, 2006**

**TO: Natural Gas and Electricity Stakeholders**

**RE: Role of Staff in Hearings**

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In a letter issued today, Howard I. Wetston, Q.C., Chair of the Ontario Energy Board, notified stakeholders of improvements that the Board intends to make in relation to its adjudicative decision-making processes. That letter, as well as the *Report with Respect to Decision-Making Processes at the OEB* that sets out the reform recommendations that are being implemented, are available on the Board's website at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca). The *Report* considers adjudicative hearing and pre-hearing processes generally, as well as the role of staff and the role of parties in those processes.

The purpose of this letter is to provide additional information with respect to the implementation of the recommendations regarding the role of staff. These recommendations are being put into effect immediately.

### **Background**

The Board has completed a review in relation to the role of staff in hearings. During that period, the Board considered different approaches to staff participation in hearings to determine the most effective way of assisting Panels in making adjudicative decisions. The objective was to identify an approach where Panels are presented with information and options from the perspective of the public interest so that they can make fully informed decisions. This is part of an ongoing initiative by the Board to ensure that Board decisions are of a consistently high quality and that its processes are:

- fair and transparent;
- timely and cost effective;

- focused on relevant issues; and
- effective in achieving the Board's statutory and regulatory mandate.

With respect to the role of OEB staff, a number of approaches were considered. In some cases, staff's role was to assist the Panel by outlining the options presented by the parties, articulating the consequences of those options and ensuring that the record on those options was complete (the "Option Identification Model"). In other cases, staff was divided into two teams: one team to take positions on the record (much like a stakeholder); the other team to provide technical assistance to the Panel (the "Two Staff Model").

Each of these two Models has limitations. The key limitation of the Option Identification Model is that the options presented to the Board, and the substantive evaluation of those options, are left entirely to the parties appearing before the Board. There are no additional options put forward or evaluated from a public interest perspective which takes into account the common good as a whole. The public interest is not a monolith. It involves balancing often conflicting interests, which is the unique responsibility of the regulator.

The key limitations of the Two Staff Model are that it imposes unnecessary resource constraints on Board staff and may result in confusion among stakeholders over the appropriate role of Board staff.

### **New Staff Model**

In order to ensure that public interest perspectives are put before the Board in a manner that is transparent and fair to all parties, the model that the Board intends to employ is a "Public Interest Advocacy Model". The key components of this Model are as follows:

- Staff will be responsible for identifying and addressing public interest issues arising in proceedings and for ensuring that they are fully canvassed before the Panel. In any given case, this may involve the preparation of evidence, the discovery of public interest issues in evidence presented by the parties and submissions to the Panel.
- Staff will carry out these activities on the public record so that all parties are aware of the issues pursued by staff, the public interest raised by those issues, and the submissions on those issues presented to the Panel. The Board will ensure that staff does not raise any new issues, facts or law when assisting the Panel that are not addressed on the public record. If issues, facts or law arise for the first time following the close of a hearing, parties will be invited to address them.

- Panels will continue to make decisions on the basis of the record with the assistance of staff, based on the Panel's determination of the facts and the application of law and policy in accordance with the Board's statutory and regulatory mandate.

The Board is putting measures into place to ensure that hearing staff have the support, training and resources necessary to enable them to successfully assume this more proactive role.

The Board will continue to update stakeholders as development occurs in the implementation of the process improvements identified in the *Report*.

Yours truly,

*Original signed by*

Kirsten Walli  
Board Secretary