Meeting Summary

Regulatory Affairs Standing Committee

Meeting Date: October 2, 2015        Time: 11:00 a.m. – 2:00 p.m.
Location: 2300 Yonge Street, 27th Floor, Main Boardroom

Attendees:

<table>
<thead>
<tr>
<th>Committee Members</th>
<th>OEB</th>
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<tbody>
<tr>
<td>Gia DeJulio, Enersource/EDA</td>
<td>Lynne Anderson, Vice-President</td>
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<td>Colin Macdonald, PowerStream</td>
<td>Kristi Sebalj, Registrar</td>
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<td>Fred Cass, Aird &amp; Berlis</td>
<td>Michael Millar, Counsel</td>
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<td>Manuela Ris-Schofield, Tandem Energy Services</td>
<td>Pascale Duguay, Manager Natural Gas</td>
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<td>Patrick McMahon, Union Gas</td>
<td>Emay Cowx, Consultant</td>
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<td>Joanne Richardson, Hydro One</td>
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<td>Chris Cowell, Entegris Powerlines</td>
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<td>Mark Rubenstein, Jay Shepherd</td>
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<td>Professional Corporation</td>
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<td>Brenda Pinke, InnPower</td>
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<td>Indy Butany-DeSouza, Horizon</td>
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<td>Martin Benum, London Hydro (Regrets)</td>
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Meeting Agenda:

1. Welcome and Introductions – Lynne Anderson
   Briefly Review the committee’s [RASC/IASC Terms of Reference 2015](#)
   Committee purpose: To provide advice, input and feedback regarding
   matters such as Rules of Practice and Procedure and related practice
   directions, Filing Requirements, Guidelines, operational policies and other
   matters relating to the OEB’s applications processes
   - Meeting agenda development
   - Approach for notes, reporting and action
   - Standing items
   - Committee process

2. Components of the Adjudicative Process
   - Issues Lists vs. Topics Lists
   - **Confidentiality Practice Direction**
     - Process for filing and management of confidential documents
1. Briefly Review the committee’s Terms of Reference 2015

- Members were referred to the document posted to the OEB website, noting that it was equally applicable to management of the Industry Affairs Standing Committee.
- The OEB indicated that as meetings for the Committee are planned, it welcomes ongoing input from members regarding items for inclusion on the agenda; final agenda items will be at the discretion of the OEB, likely determined on the basis of priority.
- Reporting of meeting discussions will be done in summary form and following review by all attending committee members, posted to the appropriate OEB webpage.
- There were no additional comments on the document from the group.

2. Components of the Adjudicative Process

a) Issues Lists vs. Topics Lists

Question was posed to the group whether there is value to having a “Topics List” at the outset of filing an application, or whether it was better to define an “Issues List” later in the process?

- The Table of Contents for an application essentially represents the topics list.
- Be clear on what purpose an Issues List serves (items in contention vs. issues to be decided).
- In rate cases there are generally only 2 to 8 particularly contentious issues.
- Issues List serves a variety of practical purposes:
  - Helpful in identifying what issues need to be addressed.
  - Useful to informing what witnesses might be required to attend a technical conference.
  - Provides a good structure for a settlement document.
  - A Topics List could serve a similar purpose if it is that specific.
- Simplifying the process to scope issues would be helpful.
During past experiences parties were asked to scope issues immediately following the settlement process (i.e., while writing up a settlement proposal) and there was insufficient time to develop/come to agreement on a list.

Moving the scoping of issues to after a technical conference would help focus the items of contention.

- A big challenge of the issues scoping process is balancing how narrowly defined the issues are so that there is sufficient level of detail to ensure focus is kept on matters salient to regulatory decision making, but keeping them broad enough so as not to limit the scope of discovery by intervenors as details emerge.
  - If issues are too granular this may impinge on the ability of the intervenor to argue in front of the OEB.
  - For example, the topic might be OM&A, but the issue should be more specific to an item within the OM&A budget or an aspect of OM&A.
  - Generally intervenors desire flexibility on what can be examined in the context of the broader issue.

- Hard to match up things discussed in settlement against the RRFE components; mapping all RRFE elements to the issues list, through to settlement, is very difficult.

- How do you get discussions focused on outcomes rather than on the inputs?

- Issues List is less helpful for written hearings.

- Scoping of Issues List can be more difficult for unique cases than a rates case, e.g. a facilities case with cost allocation issues.

- Suggestion to have a Board Member as a facilitator (not one assigned to the application) to participate during processes prior to a hearing to scope unsettled issues.
  - Someone who has authority to hear issues and bring discipline to the process

- Standard Issues List developed for natural gas facilities cases. May be very helpful to other types of cases to consider this.

**b) Confidentiality Practice Direction**

OEB should provide oversight in the governance of confidentiality among parties. It has been identified that adhering to the Practice Direction on Confidential Filings is inconsistent.

- Debate on whether the OEB should be the clearinghouse to distribute confidential documents.

- Some concern on following the letter of the Practice Direction when time is of the essence (e.g., during a hearing).
• Consider adding documents to Appendix B.
• Reports subject to copyright need to be specifically addressed.
• Applicants prefer that the OEB validates the declaration and undertaking signed by parties before the applicant sends confidential information.
• There needs to be time for the filing party to object to parties seeing the document after the declaration and undertakings have been filed.
• In response to issue of non-conformance with the PD, suggest
  o That a staff bulletin goes out reminding people of the PD;
  o Re-draft the PD in plain language;
  o Point out requirements (existing in current PD) to print large confidential documents on different coloured paper for ease of identification.
• Discussion focused on practice of confidentiality around benchmarking studies
  o A lot of disagreements are about what is going to be redacted.
  o If fully aggregated could possibly be put on public record, but granular data should be confidential.
  o Possible that no applicants will participate in benchmarking studies if studies are made public. Perhaps off the shelf – nothing specific to any particular regulated utility can be made public. Third party consultants who prepare these studies see this as their intellectual property and therefore must be held in confidence.
  o The OEB should consider that although its mandate does not extend beyond Ontario, once a document is made public by the OEB, that document is available everywhere so there are implications for other jurisdictions.
• Put a time limit on the term of confidentiality.
• Need conditions around filing of salary benchmarking, etc.
• State if there is a commercial reason to hold something confidential.
• OEB should follow up with all participants that signed a declaration and undertaking to ensure that all confidential material is destroyed and destruction certificates filed.
• Group suggested having a motions day to solve confidentiality matters.

Confidentiality during Settlement Conferences
• Current PD indicates that communications in settlement are confidential.
• There is currently no provision for communications with individuals outside of the settlement conference (e.g. client, applicant staff, etc.)
• Need to address this issue since there is a “technical breach” of the PD if people in the settlement conference are to speak with certain necessary individuals outside the room or the person in the room needs to have the power to settle without further communication with anyone else (likely impractical since it is
difficult to anticipate how the settlement discussions will go and every possible eventuality).

- Get the PD to reflect current reality and articulate constraints of who may be consulted who are not in the room to get instructions.
- Intention of the OEB is that documents are confidential, beyond settlement privilege.
- The main reason parties go outside the room is to speak with subject experts/clients to develop positions and responses to questions from other parties. Parties only go to the people they need to and do not draw in anyone into the process unless it is necessary. However, parties will not know at the outset what additional expertise or directions they may need.
  - More difficult for member-based organizations since the intervenor may need to confer with members of the primary client who is an association; comprised of many members.
- Requires deeper understanding of who is defined as the “client” and to what level/degree instructions may be required.
- Bottom line is that this issue should not derail the settlement process.
- Must be very careful if we do put language in the PD to address this issue not to create a convoluted set of rules in trying to address the degree or level of employees or clients that may be consulted. May overcomplicate the process and create a complexity that is unnecessary.

**c) Steps in the Discovery Process**

**Community Days**

- OEB does not want to duplicate what the applicants are doing but wants to inform the public of the Board’s role.
- Experience with multiple town hall meetings hosted by utilities has been met with limited success. Similar to OEB’s experience with Presentation Days held in communities.
- Utility experience has shown that customers are mostly concerned about cost and what the utility can do about the bill.
- Utilities that serve multiple communities make community days more difficult because it may require hosting in one community and not the other(s).
- Utility members noted that having some involvement by OEB staff in the applicant’s engagement activities would be good.
- Suggestion to the OEB to publish on the notice, the schedule for community days.
  - Tours of utility infrastructure noted in the application for purposes of building awareness have been well received;
• YouTube, webinars or other social media might be other ways of increasing engagement without the cost and effort involved in mobilizing to the community.
• Use social media to advertise and incent people to come to community days.
• Caution that the OEB may be perceived as facilitating the utility’s application by hosting a community day.

Presentation Days

• Suggestion that Presentation Days should be transcribed because if an applicant is making any statement in front of Board members it is perceived as an “opening statement” and naturally becomes part of evidence.

Technical conferences

• The OEB has already conducted un-transcribed technical conferences for smaller utilities on a cost of service case.
• Good for utilities as a way of potentially raising matters for settlement identification early.
• Technical conferences can feel like a round of IRs: a barrage of questions without someone adjudicating to manage the process.
• Help the process by focusing discussion on objective of clarification.
• Where and how do the Technical conference questions fit into the IR process?
• For intervenors it’s always a game of catch up; finding out information.
• Not sure if having un-transcribed technical conference may potentially hold up the hearing process as confirmation may be looked for from the technical conference and if there is no record to reference this may lead to disputes.

3. Alignment of policies between gas and electricity – An early conversation

• Meeting ran short of time to address this agenda item and will become part of the next meeting of the RASC.
• In the interim, thoughts and comments on the subject from members is welcomed.

4. Next Meeting

Propose the next meeting to be scheduled for the 3rd week in January. A calendar notice will be forthcoming.

• Prefer Fridays
• Midday timing is good.
• Send thoughts on agenda items to Kristi Sebalj and/or Lynne Anderson.