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## BY E-MAIL AND WEB POSTING

April 24, 2014

**TO: All Rate Regulated Electricity Distributors  
All Rate Regulated Natural Gas Distributors  
All Rate Regulated Electricity Transmitters  
Ontario Power Generation  
Ontario Power Authority  
Independent Electricity System Operator  
All Participants in Consultation EB-2013-0301  
All Other Interested Parties**

**RE: Review of the Framework Governing the Participation of Intervenors  
in Board Proceedings – Completion of First Phase  
Board File No. EB-2013-0301**

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### **Introduction**

In August 2013, the Board commenced a review of the framework governing the participation of intervenors in applications, policy consultations and other proceedings before the Board. The main elements of the intervenor framework are set out in the Board's [Rules of Practice and Procedure](#) (Rules) and [Practice Direction on Cost Awards](#) (Practice Direction).

As indicated in the Board's [cover letter](#) dated August 22, 2013, the review is proceeding through two phases.

The First Phase has examined whether there are modifications that should be made, in the near term and within the existing framework, regarding the Board's approach to intervenor status, cost eligibility and cost awards. As set out further below, this First Phase is now complete.

The Second Phase will examine whether, over the longer term, the Board should consider adopting a different model regarding the representation of consumer interests in Board proceedings. As explained later in this letter, the Board has yet to determine

the precise scope of the Second Phase. The Board will make that determination having regard to experience over the next year respecting the impact both of the Renewed Regulatory Framework for Electricity and of the modifications to the intervenor framework described further below.

### **Completion of the First Phase**

In the First Phase of the consultation, the Board sought input from stakeholders on how its discretion with respect to matters such as intervenor status, eligibility for cost awards, and the assessment of cost awards should be exercised going forward and whether there are any modifications that should be made to the *Rules* and the *Practice Direction* in this regard. Stakeholders were invited to submit written comments, participate in a Stakeholder Conference on October 8, 2013 and submit further written comments following that conference. Over 30 stakeholders participated in the consultation process.

The Board appreciates the views expressed by stakeholders in their written comments and during the Stakeholder Conference. This input has been very helpful to the Board in its consideration of the ways in which the intervenor framework should be modified in this First Phase of the review. The Board will consider these views further in the Second Phase of this review process.

The purpose of this letter is to conclude the First Phase of the review by setting out: a) the Board's expectations regarding the role of all participants (not only intervenors, but also applicants and Board staff) in Board adjudicative proceedings, b) the amendments that the Board has made to the *Rules* and *Practice Direction*, and c) the work that the Board will undertake over the next year in advance of the Second Phase of the review.

The amendments that the Board has made to the *Rules* and *Practice Direction* described below have been included with other amendments to these instruments made as a result of a broader review of the Board's applications processes (including the *Rules and Practice Direction*, the *Rules of Practice and Procedure for Enforcement Proceedings*, the *Practice Direction on Confidential Filings*, and the *Practice Direction on Settlement Conferences*). A separate letter, issued by the Board today, sets out all these amendments. Attached to that letter are 'marked up' versions of all the amended Board instruments.

## **First Phase – Background and Context**

The objective of the First Phase of the consultation has been to determine whether there are ways in which the intervenor framework might be modified in order to better achieve the Board's statutory objectives. The Board has been interested in considering whether changes to the Board's intervenor framework might contribute to the goal of enhancing the efficiency and effectiveness of the Board's application and hearing process, particularly having regard to the approach set out in the Renewed Regulatory Framework for Electricity.

All constituencies have a common interest in ensuring that Board proceedings are efficient and effective, particularly in light of the fact that the costs of Board proceedings are borne by ratepayers. Accordingly, the modifications that the Board is now making to the intervenor framework should be understood in relation to the Board's expectations regarding all participants in Board adjudicative proceedings – not only intervenors, but applicants and Board Staff as well.

In relation to applicants, the Board's view is that well-prepared applications – demonstrating robust planning and a clear business case based on effective customer engagement – will enhance the Board's adjudicative process. This heightened expectation of the Board regarding applications filed by electricity distributors is reflected in the revised filing requirements issued in connection with the implementation of the RRFE.

In relation to Board Staff, the role of Board Staff in proceedings before the Board has been a key consideration during the Board's review over the past year of the processes and procedures relating to applications before the Board. In particular, the Board considered the unique role of Board Staff to manage and participate actively in various aspects of adjudicative proceedings in the public interest. This unique role is reflected, for instance, in the amendments regarding the role of Board staff to the [Practice Direction on Settlement Conferences](#) issued today.

In relation to intervenors, the Board's [August 22](#) cover letter acknowledged the contribution that intervenors make to Board proceedings. The importance of that contribution was also highlighted by many participants in the First Phase consultations. The Board's view is that the ongoing contribution of intervenors would be better understood and managed if the framework provided for greater transparency, clearer accountability and clearer expectations regarding the participation by intervenors in Board proceedings. This view supported the Board's consideration of stakeholder views and suggestions for modifications to the existing intervenor framework. It is also reflected in the modifications to the framework being made at this time as set out below.

## **Modifications to the Intervenor Framework**

On the basis of the considerations set forth above and the input received from stakeholders during the First Phase, the Board has decided to make several modifications to the intervenor framework. Those modifications are as follows:

- a) An amendment to the *Rules* to require intervenors to provide information regarding the appointment and authorization of their representative in Board proceedings;
- b) The introduction of a procedure whereby frequent intervenors file, for posting on the Board's website, general organizational information that might otherwise be included in letters of intervention on a case-by-case basis;
- c) Amendments to the *Practice Direction* to clarify language in relation to the interests represented by parties eligible to apply for a cost award; and
- d) Further amendments to the *Practice Direction*, including revisions to the forms used for cost claim purposes, to provide more detailed information in support of the costs claimed in a proceeding.

These four modifications are discussed further below.

### **A. Provision of Information Regarding Proposed Participation**

The *Rules* set out the information a person is to provide to the Board for its consideration. That information includes:

- The interests of the intervenor in the proceeding;
- The identity of the intervenor and its membership;
- The grounds for the intervention;
- A concise statement of the nature and scope of the intervenor's intended participation; and
- The intervenor's intention to seek an award of costs.

In the Board's view, a prospective intervenor must also provide the Board a clear statement appointing and authorizing the individual or individuals representing them in Board proceedings. The provision of such information will help to satisfy the Board and other parties that the representative in the hearing is accountable to the intervening organization or constituency. Accordingly, the provision of this additional information will serve to support and enhance the credibility of the intervenor framework.

## **B. New Procedure for Posting of Intervenor Information**

The Board is also establishing a new procedure under which frequent intervenors file information regarding matters such as their mandate and objectives, their membership and the constituency they represent, the types of programs or activities by which they carry out their mandate, and the appointment and authorization of the individual or individuals who represent them and act on their behalf in Board proceedings.

The Board expects such information will be submitted in the first instance in a letter of intervention and thereafter updated annually or more frequently as needed. The posting of this information on the Board's website will not affect the obligation of a prospective intervenor to file a letter of intervention as required under the *Rules* when they wish to participate in a particular Board proceeding; however, the Board anticipates that the letter of intervention will refer to the information that is posted.

In the Board's view, the availability of this information will help both the Board and other parties to assess the basis for the intervenor's interest in a particular proceeding. Accordingly, the new procedure will further enhance the transparency and credibility of the intervenor framework.

## **C. Clarifying Language regarding the Interests Represented by Parties Eligible for Cost Awards**

The *Practice Direction* identifies the types of parties that are eligible for cost awards, notably parties who represent the direct interests of consumers and parties who "represent a public interest relevant to the Board's mandate". In the Board's view, the criterion relating to the "public interest" does not assist the Board in the exercise of its discretion regarding cost awards.

Intervenors, together with the applicant, represent diverse private interests, even if those interests are non-commercial and relate, instead, to the advocacy of a particular perspective regarding social, economic or environmental issues that may be relevant to a proceeding before the Board. Intervenors may inform the Board regarding their view of what constitutes the public interest, but the determination of the public interest in any proceeding is the responsibility of the Board.

Accordingly, the Board is amending the *Practice Direction* to replace the "public interest" terminology with terminology that better describes the role of intervenors regarding their representation of "an interest or a policy perspective". In the Board's view, this change will help to clarify the respective roles of intervenors, Board Staff and the Board.

#### **D. Further Information in respect of Claims for Cost Awards**

In the normal course, intervenors file a 'cost claim' when invited by the Board to do so, usually at the end of a proceeding, by way of a *Decision* or *Notice of Hearing on Cost Awards*.

The *Practice Direction* provides instructions on the types of costs that may be claimed and sets out the principles the Board uses to determine the amount of a cost award relative to the amount claimed by a cost eligible party.

Assessing cost claims against these principles is a matter of judgement in any particular proceeding. In the Board's view, the Board panel responsible for assessing costs in a particular case would be assisted by the provision by intervenors of further information about: a) their participation in the various steps in the proceeding, and b) any efforts to co-operate with one or more other parties to reduce duplication of effort in matters such as interrogatories. Such information would be of assistance by providing insight into activities and work not directly observable by the presiding Board panel.

In addition, the Board's view is that in particular circumstances, such as a lengthy proceeding, the Board panel would be assisted by having, prior to the conclusion of the proceeding, earlier information regarding the costs incurred during a particular phase of the proceeding.

In order to secure that information, the Board has determined that:

- A Panel may, where circumstances warrant, request that parties eligible for a cost award submit an interim statement (i.e. not an actual claim) of costs incurred to a specified date;
- Those parties will be invited to outline in their cost claim any efforts to co-operate or combine their interventions with other parties; and
- Those parties should also identify costs claimed by activity (e.g. technical and settlement conferences; interrogatories).

The *Practice Direction* and the forms used with respect to cost claims are amended accordingly.

### **Consultation Next Steps**

As indicated above, the Board has yet to determine the precise scope of the Second Phase with respect to its review of the intervenor framework. Over the next year, the Board will monitor and assess the impact on Board proceedings of: a) the changes to the intervenor framework outlined above, and b) the other initiatives arising from the Board's review of its applications process and from the implementation of Renewed Regulatory Framework for Electricity. Those other initiatives include:

- The emphasis of the need for customer engagement in connection with the distributor planning processes;
- The revision of the Filing Requirements for Electricity Distribution Applications and the use of a generic issues list;
- Changes to interrogatory procedures; and
- The role of Board staff with respect to settlement conferences.

The Board will issue a further communication regarding this Second Phase in due course.

### **Cost Awards**

As noted above, this consultation process is an ongoing one. However, the Board wishes to address cost awards for the First Phase of the consultation at this time. Accordingly, a *Notice of Hearing for Cost Awards* for the First Phase will be issued in due course. Cost awards in relation to eligible consultation activities that take place in the future will be addressed at the relevant time.

**Dated** at Toronto, April 24, 2014

**ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary