

## Adjudication Modernization Committee

**Date/Time:** September 9, 2021 (1:00 pm to 3:00 pm)

**Location:** Via Zoom

5 minutes	Welcome – Susanna Zagar, CEO
5 minutes	Opening Remarks – Harneet Panesar, COO
30 minutes	Protocol for Adjudicative Timelines – Nancy Marconi, Manager, Generation and Transmission
20 minutes	Practice Direction on Confidential Filings – Lawren Murray, OEB Legal Counsel
10 minutes	Break
30 minutes	Jurisdictional Review of Intervenor Participation Rules – Christine Long, Registrar
15 minutes	Chief Commissioner Plan Initiatives (Scope of future AMC meetings) – Lynne Anderson, Chief Commissioner
5 minutes	Wrap-Up

**AMC Notes – September 9, 2021 – 1:00 – 3:00 p.m.**

Topic Name	Presenter	Purpose and Feedback Sought	Themes Discussed
Protocol for Adjudicative Timelines	Nancy Marconi	<ul style="list-style-type: none"> <li>• The appropriateness of establishing a protocol to account for delays in processing applications outside of the OEB’s control, and the adjustment of timelines that would result</li> <li>• If the proposed delay threshold of 2 weeks is an appropriate length of time</li> <li>• Whether the types of events planned to be covered by the protocol are appropriate</li> <li>• Other elements that should be considered in any protocol</li> </ul>	<ul style="list-style-type: none"> <li>• There was general support for accounting for delays to provide certainty to applicants, especially to account for the holiday period. But there should be flexibility built in. Some of the more complex applications have lots of wrinkles and there is a need to build agility into the process.</li> <li>• Further analysis could be done on why extension requests are being submitted in support of future revisions to performance standards.</li> <li>• The OEB commented that it strives to meet performance standards in every application. But the target has been to meet them 80%. This protocol will allow the OEB to increase that target to 90% per the Strategic Plan.</li> <li>• Any delay required for the filing of intervenor evidence should be included in the protocol. If intervenor requests are not covered by the protocol, it is less likely that an intervenor would be granted the extension it needs.</li> <li>• Prescriptive events that will trigger the protocol will be helpful. There should be greater clarity on what comprises “Other Third-Party Authority” delays. Do these include Indigenous consultation? The OEB indicated that this would be considered and noted that other third parties could be the TSSA, a Supreme Court Decision, a ministry decision on environmental consultations, etc.</li> </ul>

Topic Name	Presenter	Purpose and Feedback Sought	Themes Discussed
Proposed Amendments to the Practice Direction on Confidential Filings	Lawren Murray	<p>Discussion on Proposed Key Amendments:</p> <ul style="list-style-type: none"> <li>• “Presumptively Confidential” Information</li> <li>• Standard Process for Raising Objections to Confidentiality and Declaration and Undertakings</li> <li>• Treatment of Personal Information</li> </ul>	<ul style="list-style-type: none"> <li>• There was general support for the amendments</li> <li>• Members offered to provide a more specific list of types of documents that could be added to the “presumptively confidential” list for cybersecurity and affiliates / unregulated businesses. The OEB agreed to consider this information.</li> <li>• There was discussion of “permanent redactions”. The OEB indicated there have been concerns about different degrees/levels of confidentiality requested in proceedings e.g. some that parties don’t see.</li> <li>• It was commented that some evidence contains co-mingled information of regulated and unregulated businesses, and the unregulated information is not relevant and should be permanently redacted.</li> <li>• For smaller utilities, this may be a shared service issue and the focus of the OEB should be on non-competitive activity.</li> <li>• It was commented that the financial statements of an affiliate should be deemed not relevant.</li> <li>• There was support for eliminating the distinction between internal/external consultants or lawyers for the purpose of accepting a Declaration and Undertaking so long as the representative signing the D&amp;U is actively engaged in the proceeding.</li> <li>• It was commented that the OEB needs to be cautious and ensure that parties do not lose protections for competitive information as its exposure to a competitor could be detrimental.</li> </ul>

Topic Name	Presenter	Purpose and Feedback Sought	Themes Discussed
Jurisdictional Review of Intervenor Processes	Christine Long	<ul style="list-style-type: none"> <li>• Provide the results of the jurisdictional review on intervenor processes</li> <li>• Summarize the themes of the jurisdictional review</li> <li>• Seek feedback on areas to improve the efficiency of intervenor processes</li> </ul>	<ul style="list-style-type: none"> <li>• Several indicated that the jurisdictional review was a good summary. But it was also noted that every jurisdiction is different, and that context is important.</li> <li>• The OEB was asked what the problem is. The OEB commented that it is looking for ways to improve the current model to improve efficiency, for example fostering more collaboration among parties including posting of the application earlier if it will help and identifying issues in intervention request letters.</li> <li>• The process of Duty to Consult and accommodate the interests of Indigenous groups was raised. There are a range of interests around decisions the OEB makes. The OEB should look at other regulators (CNSC, Impact Assessment Agency of Canada) that have developed strong policies on Indigenous consultation.</li> <li>• The OEB should also be reviewing the effectiveness of intervenor processes, not just efficiency.</li> <li>• One party noted that while the OEB can work towards improving the current processes, if this doesn't achieve results, a consumer advocate model could be considered.</li> <li>• It was proposed that the OEB examine the cost award process being undertaken by the Washington regulator as it has begun paying intervenors throughout a proceeding.</li> <li>• Some noted that Any changes to the cost awards process can have significant impacts on the involvement of intervenors in proceedings.</li> </ul>

Topic Name	Presenter	Purpose and Feedback Sought	Themes Discussed
Chief Commissioner Plan Initiative	Lynne Anderson	<ul style="list-style-type: none"> <li>• The Chief Commissioner noted that at the next meeting, there will be a discussion of what initiatives or changes the OEB could make to improve the efficiency of the adjudicative processes, while ensuring procedural fairness.</li> <li>• For example, the OEB changed its process to correct some errors prior to interrogatories.</li> <li>• What are some of the initiatives (big and small) that the OEB can introduce to improve the efficiency of its adjudicative processes?</li> <li>• The OEB is seeking ideas and input to be discussed at the next meeting</li> </ul>	N/A