

ONTARIO ENERGY BOARD

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# ACTION PLAN

IN RESPONSE TO STAKEHOLDER  
COMMENTS ON THE FRAMEWORK FOR  
REVIEW OF INTERVENOR PROCESSES  
AND COST AWARDS

SEPTEMBER 22, 2022



Ontario  
Energy  
Board

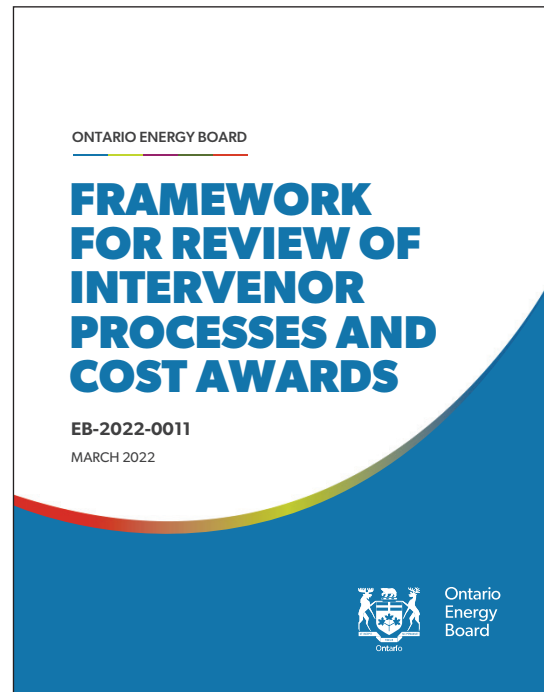
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# INTRODUCTION

The Ontario Energy Board (OEB) is pleased to share that it has designed a robust action plan (Action Plan) in response to comments received on the **Framework for Review of Intervenor Processes and Cost Awards (Framework)**. This work furthers the many initiatives undertaken to modernize and refine adjudicative processes, and enhance transparency since the OEB's new governance structure was put in place in October 2020. The OEB appreciates the input and continued efforts from stakeholders to engage with us throughout this process.

The OEB is certain that the projects identified in the Action Plan will provide added and targeted improvements that will be beneficial to the adjudicative process. The projects will help further clarify requirements, provide additional tools to manage and refine the adjudicative process, and identify the appropriate participation by those affected by the outcomes of our proceedings. As the OEB works on these improvements, it is with the understanding that procedural fairness of the OEB's proceedings must always be ensured. The Action Plan is just one aspect of the OEB's focus on unrelenting improvement and innovation in our own work.



# BACKGROUND

On March 31, 2022, the OEB issued a letter to stakeholders seeking feedback on the OEB's Framework. The Framework identified potential initiatives to enhance the OEB's efficiency and effectiveness of the adjudicative process, particularly the role of intervenors within it, and sought feedback from stakeholders on the potential initiatives. The OEB also expressed an openness to hearing additional, new ideas for enhancing the adjudicative process.

Comments from stakeholders were received until May 1, 2022. The OEB reviewed the comments and held internal discussions on priorities to improve the efficiency and effectiveness of the adjudicative process. As a result, this Action Plan has been developed.

The Action Plan consists of 11 projects, with five scheduled to be completed by the end of this fiscal year (March 31, 2023) and six to be completed by the end of next fiscal year (March 31, 2024). Work has already commenced on each of the 11 projects. As the work progresses, there will be opportunities for further input from stakeholders as appropriate. The OEB will continue to practice active adjudication<sup>1</sup> and look for opportunities to consider novel approaches to adjudication where appropriate.

The Action Plan responds to requests from Minister Todd Smith, Minister of Energy, to the OEB, as set out in the November 15, 2021 mandate letter, as well as the one received on October 1, 2020 from Greg Rickford, Minister of Energy, Northern Development and Mines, to review intervenor processes and identify opportunities to improve their efficiency and effectiveness. The Action Plan also fulfills commitments around reviewing intervenor processes identified in the Chief Commissioner plan issued on April 1, 2021, and fits with the OEB's goal of continuous improvement, evolution and modernization on its journey to being a top quartile regulator.

Since the OEB's new corporate governance structure was put in place in October 2020, numerous initiatives have been completed to modernize and refine adjudicative processes, and ensure greater transparency. The 11 projects in the Action Plan strategically build upon these initiatives. For example, the OEB has:

## ***Refined Application Timelines/Filings Processes:***

- Updated performance standards for Leave to Construct applications and Motions to Review
- Launched an online portal for filing Licence applications (new and renewal)

## ***Enhanced Access to and Reporting Transparency of Adjudicative Proceedings:***

- Established additional adjudicative reporting with the publication of an Adjudicative Dashboard and new performance measures, and the development of an adjudicative reporting protocol

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<sup>1</sup> Active adjudication is the enhanced approach used by the OEB to proactively establish and control adjudicative processes that are efficient, effective and procedurally fair. It ensures that the information being put on the record of each proceeding is relevant and of material value to the decision-maker, while ensuring that procedural fairness is respected.

- Increased the transparency of the status of OEB proceedings by posting schedules for select Rate applications
- Increased accessibility of hearings with the move to virtual hearings and the streaming of hearings on YouTube

### ***Provided Support and Increased Certainty through Amendments to/ Development of Rules and Guidelines:***

- Streamlined the OEB’s approach to confidential filings by identifying information that is presumptively confidential, and establishing set procedural timelines
- Issued amendments to the OEB’s Rules of Practice and Procedure (Rules) to clarify requirements related to Motions to Review
- Posted revised versions of the Rules, Rules for Enforcement Proceedings, Practice Direction on Settlement Conferences, Practice Direction on Confidential Filings, and Declaration and Undertaking form to reflect changes in the OEB’s governance structure and digitization initiative
- Established new filing requirements to streamline filings for small distributor Rate applications (distributors with fewer than 30,000 customers)
- Developed the Natural Gas Facilities Handbook

### ***Updated/Completed Plans for Decision Makers:***

- Refreshed delegations to OEB employees under section 6 of the *Ontario Energy Board Act, 1998* and posted these delegations on the OEB website to provide transparency into when decisions are issued by a delegated authority
- Completed a reappointment and recruitment plan for Commissioners to be effective October 1, 2022

These initiatives, among others, have changed our regulatory landscape and adjudicative processes. The OEB’s focus on adjudicative modernization and process improvement has streamlined application processes; provided clarity, certainty and transparency to parties on adjudicative process; and enhanced the OEB’s ability to actively adjudicate. And, with the additional Commissioners appointed in 2020 and 2021, there is an enhanced opportunity for active involvement and adjudication by panels throughout the hearing process.

The 11 identified projects take a targeted approach to improvement. There was general consensus by stakeholders that intervenors bring significant benefit to proceedings and can present a diversity of views that would otherwise be costly for the OEB to provide in proceedings. Stakeholders provided helpful comments. No stakeholders filed a proposal for a total overhaul of intervenor processes. Stakeholders generally commented that the OEB already has the tools to address many of the concerns set out in the Framework, and the Commissioners are committed to using those tools to be active adjudicators.

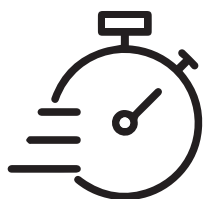
# ACTION PLAN SUMMARY

In summary, the following 11 projects constitute the OEB's Action Plan. The projects will specifically address the process for adjudicating applications, and may help inform future changes to the process for policy consultations.

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## ACTION PLAN

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### **NEAR-TERM PROJECTS** (concluding in fiscal year 2022-2023)

#### **1. Substantial Interest:**

Clarify the meaning of substantial interest through revisions to the Rules or guidance documentation, or both, and examine the need to develop a standard form that will be filled out by prospective intervenors that will accompany (or possibly replace) their intervention letter.

#### **2. Intervention Letters and Annual Filings:**

Update the requirements for information to be filed by persons applying for intervenor status. Provide guidance on what constitutes a frequent intervenor and the purpose of annual filings.

#### **3. Commissioner Training:**

Continue to provide ongoing training to Commissioners, with a specific focus on having a common understanding of active adjudication and how it can be used to ensure proceedings are more efficient and effective.

#### **4. Active Adjudication Database:**

Create a database of active adjudication practices and ideas for the OEB to track and assess the efficacy of active adjudication in proceedings.

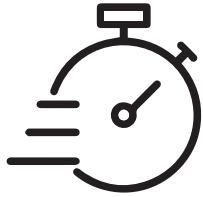
#### **5. Standard Issues List:**

Develop a Standard Issues List for electricity distribution Rate applications.

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## ACTION PLAN

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### **MEDIUM-TERM PROJECTS** (concluding in fiscal year 2023-2024)

- 6. Cost Award Guidance:** Develop guidance documentation that clarifies rules and eligibility for cost awards, and appropriately accounts for collaboration in cost awards. As well, review the appropriateness of the fee tariff, but with a goal of funding any increase in the fee tariff with offsetting process efficiencies, so as to generally maintain the overall envelope of intervenor costs.
- 7. Cost Award Data Collection:** Expand the data collected on cost awards and utility application costs to better understand the overall costs of utility applications, including cost awards.
- 8. Individual Intervenors:** Examine the most efficient manner that individuals can participate in the adjudicative process, while still allowing the OEB to hear and consider an individual's concerns, and establish guidance documentation and/or updates to the Rules to implement any changes.
- 9. Engagement with Indigenous Participants:** Examine ways to further engage with representatives of Indigenous communities on participation in our adjudicative process.
- 10. Issues List Process:** Review the Issues List process, including when and how an Issues List is determined in a proceeding.
- 11. Expert Evidence:** Examine the Rules to ensure that current practices associated with expert evidence are reflected and seek to provide clarity and guidance on requirements for expert witnesses/evidence.

# SUBMISSIONS RECEIVED FROM STAKEHOLDERS AND OEB ACTIONS ADDRESSING SUBMISSIONS

The OEB received 19 submissions from intervenors and four submissions that represented a majority of utilities in the province. The OEB appreciates stakeholders’ thoughtful comments, which assisted in developing the Action Plan.

Fifteen questions were posed in the Framework (see Appendix B in the Framework) and comments were received focusing on several themes. In the sub-sections that follow, comments from stakeholders are summarized by these themes, accompanied by an overview of the actions the OEB has taken, or will undertake, to address such comments.

## THEME 1

### **Increasing Proceeding Efficiency by Clarifying Application Expectations**

The Framework discussed several initiatives already underway or completed, which are expected to result in more focused evidence and discovery. Further, the OEB asked whether other initiatives should be considered to better clarify application expectations and result in more efficient proceedings. Stakeholders were supportive of the work that is already underway or completed, and additional suggestions that were provided by stakeholders will have the opportunity to be addressed through existing initiatives.

The OEB has established a working group of stakeholders to review filing requirements for large distributor Rate applications.

For example, there were suggestions to review workbooks, require applicants to anticipate typical interrogatories and file the information in their pre-filed evidence, and decrease the amount of irrelevant and repetitive material filed in applications. These suggestions can be addressed through the OEB’s ongoing review and update of filing requirements, as well as the current review of filing requirements for large distributors’ Rate applications by a working group of stakeholders initiated earlier this year. Furthermore, the OEB initiated post-application debriefs with parties last year. Stakeholders are encouraged to identify areas for improvement at these sessions to assist the OEB with continuous improvement.



Ontario Power Generation (OPG) suggested that a review of its filing requirements should be initiated, citing the potential for opportunities to reduce the volume of information filed in its application and focusing the evidence to reduce the number of interrogatories it receives. The OEB agrees with reviewing OPG's filing requirements, and will do so before its next rebasing application is filed.

Other comments suggested that there should be more focus on the quality of the evidence filed, rather than the quantity, and that the OEB should require supportive

Where an application does not follow the filing requirements, a reasonable explanation for the change must be provided.

rationale for any deviations from filing requirements. The OEB notes that in December 2021 the OEB released updated Chapter 1 Filing Requirements for Electricity Distribution Rate Applications. This update established the expectation that distributors file a clearly written, accurate and complete, yet succinct, application that presents information and data consistently, and provides sufficient justification for its proposals. Furthermore, the updated filing requirements aim to provide distributors with flexibility to scale their evidence to their specific requests, as well as the opportunity to provide reasons for not filing required information while having their applications deemed complete.

Other comments suggested that pre-application meetings should be held with applicants (and intervenors), and that the OEB should consider providing guidance to clarify the opportunity and role of such assistance by the OEB. Applicants are encouraged to contact the OEB in advance of filing an application, regardless of their utility size, in keeping with the OEB's invitation in June of 2021<sup>2</sup> to host pre-application meetings for all electricity and natural gas cost of service applications.

The OEB will commence an initiative to update the filing requirements for OPG at an appropriate time to have them completed before OPG's next rebasing application.

Applicants are encouraged to make use of pre-application meetings to discuss their approach in advance of filing, and invite frequent intervenors relevant to their service area.

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<sup>2</sup> June 24, 2021 letter to rate-regulated electricity distributors and other interested stakeholders regarding updated filing requirements for electricity distribution rate applications: <https://www.oeb.ca/sites/default/files/OEBltr-Filing-Requirements-20210624.pdf>

## THEME 2

### Collaboration

Collaboration among intervenors was raised in the Framework, and the OEB sought comments from stakeholders on what more could be done to encourage collaboration of intervenors with similar views on issues and with similar interests. A general theme in the comments received from intervenors was that many already collaborate in proceedings, and that such collaboration should not be forced or mandated by the OEB. It was also noted by stakeholders that intervenors with similar interests can take different approaches and, if forced to collaborate, could potentially reduce the diversity of views in a proceeding. The Building Owners and Managers Association (BOMA) suggested that the OEB should give greater weighting/time to joint submissions, while Pollution Probe (PP) stated that there should be an increase in Commissioners' recognition and favourable consideration of intervenor coordination and combined interventions, noting that coordination on issues between parties can often be invisible to the OEB, but is actively occurring to drive efficiency in proceedings.

Where suggestions were provided by stakeholders on how the OEB can encourage collaboration, two central elements were highlighted: (i) the use of active adjudication; and (ii) the cost awards process. For example, the Low-Income Energy Network (LIEN) suggested that the OEB can encourage collaboration by allowing more time between the Issues List and formulation of interrogatories. The Ontario Energy Association (OEA), on behalf of the Coalition of Large Distributors Plus (CLD+), commented that the OEB should consider how cost awards can be improved to better align incentives with efficiency and effectiveness than under the current hourly rates approach.

Comments from utilities suggested that the OEB should deny duplicate intervention requests and require like-minded intervenors to work together. For example, the Electricity Distributors Association (EDA) suggested that the OEB could consider running a pilot project testing alternative cost awards that encourage collaboration, such as the sharing of cost awards, capping cost awards, and establishing intervenor conferences/meetings to address collaboration and

The OEB will develop guidance documentation on cost awards to clarify the rules and eligibility for cost awards on overlapping positions, and appropriately account for collaboration by intervenors.

reduce duplicative work. Similar suggestions related to the capping of costs were also provided by Cornerstone Hydro Electric Concepts Association (CHEC) and OPG which, respectively, stated that intervenor costs for written/oral hearings should be reduced or limited based on the size of the local distribution company, and that for parties with similar interests, the OEB should only allow one to receive cost awards, and that a maximum amount should be set.

The OEB notes that several projects in this Action Plan will address the comments received by stakeholders regarding collaboration and cost awards. This will be addressed through **Medium-term Project 6** in the OEB's Action Plan – developing guidance documentation on cost

awards, **Near-term Project 3** in the Action Plan – ensuring that Commissioners are trained in active adjudication, and **Near-term Project 4** – maintaining a database of active adjudication practices.

The guidance documentation on cost awards will clarify the rules and eligibility for cost awards on overlapping positions, and appropriately account for collaboration in cost awards.

Through **Near-term Project 3**, the OEB will continue to provide ongoing training to Commissioners, with a specific focus on having a common understanding of active adjudication and how it can be used to ensure proceedings are more efficient and effective. The database of active adjudication practices and ideas, created through **Near-term Project 4**, will be informed by meetings with Commissioners, OEB staff and post-application debriefs, and act as a repository for the OEB to track and assess the efficacy of approaches to active adjudication in proceedings.



Commissioners will continue to receive training with a specific focus on having a common understanding of active adjudication.

### THEME 3

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## Substantial Interest

The OEB's current Rules require applicants for intervenor status to have a substantial interest in a matter. The Framework asked several questions of stakeholders on substantial interest such as how the OEB should define substantial interest for Rate and Leave to Construct applications; if substantial interest needs to be further defined for other types of applications; and if there should be changes to the manner in which the OEB considers accepting intervenors into proceedings. There were many varied comments received from stakeholders regarding this theme.

The comments indicated that there was some confusion regarding the use of substantial interest as a test for granting intervenor status versus granting cost award eligibility. On a general basis, comments were divided between intervenors and utilities, the former wanting to keep practices largely as is and not impose restrictions and the latter wanting to establish clearer expectations and requirements. However, both intervenors and utilities were aligned in their comments on clarifying that customer groups will have a substantial interest in certain types of proceedings. Some stakeholders also suggested that the substantial interest of customer groups should go beyond Rate applications and encompass all applications, in particular Leave to Construct applications.

For example, the Consumers Council of Canada (CCC) commented that ratepayers, landowners, and Indigenous groups should be deemed to have a substantial interest in Leave to Construct applications. Similarly, the London Property Managers Association (LPMA) suggested that landowners, as well as environmental groups, should also be deemed to have a substantial interest in Leave to Construct applications.

Anwaatin Inc. (Anwaatin) commented that for Leave to Construct applications, any change to the definition of an interest in land with respect to a Leave to Construct application must respect Aboriginal and Treaty rights and be informed by an understanding of the historical and contemporary uses of traditional territories and Treaty lands by Indigenous peoples.

Other comments went beyond addressing the type of applications in which customer groups should be deemed to have a substantial interest. The EDA suggested that the OEB should document its expectations of intervenors, the actions it will/will not allow, and how the OEB will monitor intervenors' participation and enforce its expectations. Energy Probe (EP) commented that the strength of the interest and the number of issues that a party is interested in should be considered in the determination of which party has a substantial interest. To do so, EP suggested that the OEB could include a preliminary Issues List with the notice of proceeding and ask parties that are applying for intervention to identify the issues that are of interest to them, together with reasons for their interest.

Updates to the Rules and/or other guidance documentation will clarify the meaning of substantial interest. There will also be an examination of other approaches to participation in proceedings for certain parties.

Similarly, OPG suggested that intervenors should be required to establish an intervention plan, possibly after determination of the Issues List, which would allow the OEB to review how an intervenor plans to pursue its substantial interest in a proceeding. OPG also noted that intervention plans would allow the OEB to provide early direction to applicable intervenors as it would be able to determine what will/will not assist it in deciding matters in the proceeding or identify areas where it views planned hours as excessive.

Green Energy Coalition (GEC) suggested that policy intervenors should not be considered less important than ratepayer intervenors, a sentiment that was also reflected in comments from other stakeholders. EP suggested that substantial interest should also be defined for energy policy and regulatory policy consultations and proceedings, while LPMA commented that for policy initiatives and applications, the OEB should consider all parties that would be impacted by the implementation or change of policy to have a substantial interest.

Stakeholders' comments will be addressed through **Near-term Project 1**, which will clarify the meaning of substantial interest through revisions to the OEB's Rules or separate guidance documentation, or both. The current Rules require all intervenors to satisfy the OEB that they intend to participate actively and responsibly in the proceeding by submitting evidence, argument or interrogatories, or by cross-examining a witness. The OEB will examine the Rules to determine if there are other approaches to participation in OEB proceedings for certain parties (e.g., Theme #7: Representation by Individuals) that are appropriately scoped to the process. There will also be an examination of the need to develop a standard form that will be filled out by prospective intervenors and accompany (or possibly replace) their intervention letter. The form would be intended to allow the OEB to better understand exactly what the intervenor's interest is in the application and enhance the type of information filed.

## THEME 4

### Cost Awards

The OEB will examine the need to develop a standard form to accompany (or replace) the intervention letter of a prospective intervenor.

The Framework outlined potential changes to the evaluation criteria for who is granted cost awards and the approach to the quantum of costs awarded. Questions related to cost award eligibility were also posed in the Framework. In general, comments received from utilities suggested that the OEB could collect more data on cost awards and undertake benchmarking analyses. Intervenors noted that cost awards represent only a small portion of regulatory costs and expressed a desire for for-profit entities to be allowed cost awards.

Other related suggestions included Anwaatin's comment that the lack of capacity funding, coupled with limited and unreliable electricity and unreliable and slow internet access, is a significant barrier to broad and equitable Indigenous participation in OEB proceedings and consultations. Anwaatin encouraged the OEB to consider alternative approaches to Indigenous participation in proceedings and consultations, including dedicated participation funding. Environmental Defence (ED) commented that the OEB should allow cost awards for a group municipal intervenor while LIEN suggested that the OEB require submissions from all intervenors setting out ballpark cost estimates of expected intervention after the Issues List is determined.

Guidance documentation for cost awards regarding overlapping positions will be established, and the approach for for-profit/policy intervenors will be examined.

A common theme in the comments received from intervenors, such as those from the Industrial Gas Users Association, was that the fee tariff needs to be updated. Several intervenors highlighted that the existing fee tariff makes it difficult to attract quality experts and legal counsel.

These comments will be considered through **Medium-term Project 6** and **Medium-term Project 7**. **Medium-term Project 6** will examine the approach for for-profit/policy intervenors, consider cost-award eligibility for overlapping positions, and provide guidance on collaboration. The fee tariff will also be reviewed, in conjunction with other initiatives, but will be done with a goal of funding any increase in the fee tariff with offsetting process efficiencies, so as to generally maintain the overall envelope of intervenor costs. The OEB recognizes that the fee has not been reviewed since 2007, and it is appropriate to assess the reasonableness of the tariff. This review is not an exercise in establishing a fixed or capped envelope of total intervenor costs. However, given the objective of this Action Plan is to improve the efficiency and effectiveness of adjudicative processes, the OEB expects there to be efficiency improvements that will have an offsetting effect on overall costs if the fee tariff is amended. The OEB will also consider whether the current fee tariff is a barrier to effectiveness in any way. Through **Medium-term Project 7**, the OEB will look to expand its data collection on cost awards and utility application costs to better understand the overall costs of utility applications, including cost awards. **Medium-term Project 9** will also begin to consider Indigenous participation in OEB processes.


## THEME 5

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### Increasing Participation

The Framework discussed the importance of participation of parties in the adjudicative process and how cost awards support participation. The Framework sought comments from stakeholders on the theme of participation. Intervenors, most notably Anwaatin, expressed a desire for the OEB to enable greater participation. For example, Anwaatin proposed the idea of the OEB considering how to encourage more Indigenous participation, while BOMA commented

that healthcare and post-secondary do not seem to be directly represented. PP suggested that the OEB should be enabling greater participation and should increase the number of stakeholder communication and engagement sessions outside of a specific regulatory proceeding.



Ways to further engage with Indigenous participants will be examined by the OEB.

The OEB will take a targeted approach and first examine ways to further engage with representatives of Indigenous communities on participation in our adjudicative process. This will be undertaken through **Medium-term Project 9** and with consideration to the timing of other associated initiatives.

## THEME 6

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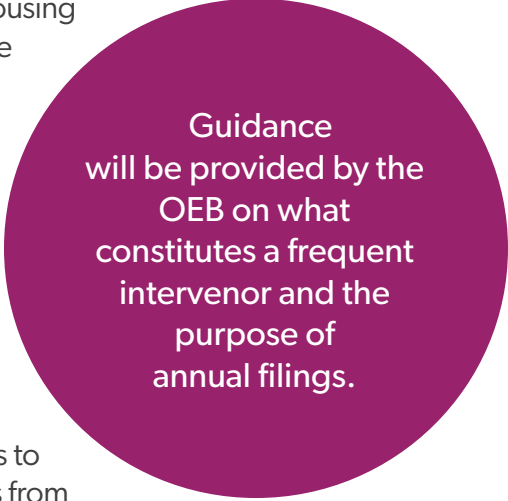
### Annual Filings

The Framework noted that frequent intervenors are required to annually file information with the OEB pertaining to their mandate and objectives, 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(s) who represent and act for them in OEB proceedings. However, the Framework noted that there is concern that an intervenor that makes an annual filing to the OEB may assume that they will be granted intervenor status in proceedings without having to justify a substantial interest in a particular proceeding. As such, the OEB sought feedback from stakeholders on how it should proceed with the annual filings that are currently required from frequent intervenors.

Not all stakeholders provided comment on this theme. Of those that did, they indicated that such filings are worthwhile, sufficient and should be continued. However, some stakeholders also provided suggestions for the OEB's consideration. CCC suggested that the OEB provide clarity on the purpose of annual filings and the value of them for the OEB. This sentiment was also reflected in comments received by LPMA, but who went further, suggesting that the OEB clearly define what constitutes a frequent intervenor.

Other comments received pertained to the type of information provided in annual filings. BOMA and the OEA, on behalf of CLD+, commented that the OEB should require enhanced filings, while the Federation of Rental-housing Providers in Ontario suggested that the OEB could provide guidance on what should be included to enhance the functionality of the filing. CCC and the Vulnerable Energy Consumers Coalition commented that the OEB should only require an update to the filing if there is a material change after the first filing.

Through **Near-term Project 2**, the OEB will provide guidance on what is a frequent intervenor and the purpose of annual filings, outline the consequences of not filing, and update the information required to be filed. Also, the OEB will consider the need to require intervenors to provide details of how representatives receive instructions from associations and how outcomes are reported back.



Guidance will be provided by the OEB on what constitutes a frequent intervenor and the purpose of annual filings.

## THEME 7

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### Representation by Individuals

The Framework sought comments from stakeholders on whether there is a better way to represent the interests identified by individual ratepayers. The EDA suggested that the OEB should incent and support individual ratepayers to act collectively. To do so, the EDA recommended that individual ratepayer interests should be established at the earliest opportunity and should provide information as to the scope of their participation in the proceeding. It was also suggested that the OEB explore assigning new intervenors a 'mentor' or providing a training program. Intervenors highlighted that they actively assist and support individual intervenors in proceedings, as appropriate.

Other comments pertained to establishing requirements of individuals when they apply for intervenor status and how the OEB can account for individual intervenors in proceedings. For example, EP suggested that if an individual ratepayer wishes to intervene, the ratepayer should file a letter of intervention outlining the issues to be explored and the ratepayer's expertise. This would allow the OEB to decide if the ratepayer's interest is substantial and if the ratepayer has the expertise to effectively participate in the proceeding. If an individual ratepayer were unable to meet the qualification, EP suggested that they could discuss their concerns with OEB staff, to see if OEB staff can represent them. The School Energy Coalition (SEC) noted that the OEB should not discount its existing tools for controlling individual intervenors' claimed costs.

The OEB will examine the most efficient manner that individual intervenors can participate in the adjudicative process. Guidance documentation and/or updates to the Rules will be made, as necessary.

In **Medium-term Project 8**, the OEB will examine the most efficient manner that individuals can participate in the adjudicative process, while still allowing the OEB to hear and consider an individual's concerns. As necessary, guidance documentation and/or updates to the Rules will be made.

## THEME 8

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### Expert Evidence

The Framework discussed the matter of expert witnesses/evidence in proceedings. It was noted that the OEB currently has a threshold for admitting expert evidence, which consists of considering the relevance of the expert's opinion to a material issue before the tribunal, the necessity of such opinions to the Commissioner's decision-making process, and the qualifications of the expert. The question posed to stakeholders in the Framework was whether there are other changes that the OEB should consider to clarify the requirements for experts to file evidence and the related requests for cost awards.

Where suggestions were provided by stakeholders, three central elements were highlighted: (i) receiving guidance/clarification on where such evidence can assist the OEB, (ii) establishing a requirement to detail the benefit/cost of such evidence, and, (iii) appropriately accounting for such evidence in cost awards.

Stakeholders indicated that panels of Commissioners should provide guidance on what expert evidence would be useful to them, if any. For example, EP suggested that on the preliminary Issues List, the OEB could identify issues where it would be assisted by expert evidence. Anwaatin suggested that guidance provided by the OEB on expert witness procedures should ensure that it is inclusive and welcoming to the realities of Indigenous governments, Elders, and community members. Further, the Gas Pipeline Landowners of Ontario stated that the OEB should qualify experts earlier in a proceeding as it could be useful in ensuring that expert evidence submitted will be relevant and useful to the OEB's decision-making process.

Utilities commented that the OEB should require more information on the costs and benefits of expert evidence. Similarly, EP, ED and LIEN commented that a party should provide a proposed



budget for expert evidence and outline the benefits of such evidence to the proceeding. This was also noted by the EDA, who suggested that the OEB should require the party proposing to file evidence to provide information on how incurring the cost of studies benefits ratepayers and show how benefits outweigh costs. The EDA suggested that this should apply regardless of the party that identified the need for the study.

Regarding the implications of expert evidence on cost awards, ED commented that the OEB should require a budget for expert evidence, but only for preparing the evidence and that the subsequent procedural steps should have flexibility in the budget. It was also noted by some stakeholders that the

pursuit of qualified candidates to provide expert evidence was frustrated by the capped tariffs, as they stated that they were lower than the market price that seasoned experts command.

The process for when and how an Issues List is determined will be reviewed.

Practices associated with expert evidence/witnesses will be reviewed to ensure current practices are reflected in Rules/guidance documentation.

To address the comments received, the OEB will examine its Rules

to ensure that current practices associated with expert evidence are reflected and will provide clarity and guidance on requirements for expert witnesses/evidence. This will be **Medium-term Project 11**. A related project is **Medium-term Project 10**, which will review the Issues List process and, among other things, examine the process for when and how an Issues List is determined in a proceeding.

## THEME 9

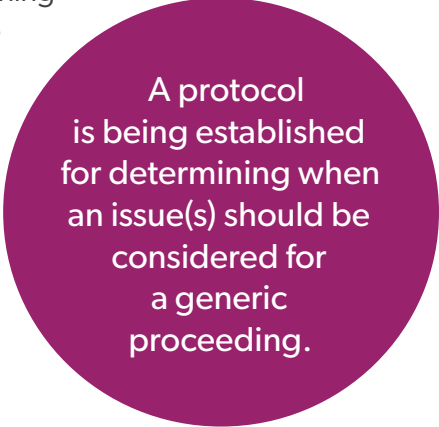
### Generic Proceedings

The Framework sought comments from parties on whether there are changes that the OEB should consider with respect to generic proceedings. Of those that responded, stakeholders expressed general support for the use of more generic proceedings over policy consultations – specifically to address matters such as standby rates, electric vehicles, distributed energy resources, energy storage, and natural gas Integrated Resource Planning frameworks. However, there were also comments expressing a desire for the OEB to establish protocols for generic proceedings.

For example, the EDA suggested that the OEB should develop an approach for transitioning generic issues discovered when adjudicating an application to a more appropriate proceeding, such as a policy formation or policy review initiative. Along a similar sentiment, LPMA commented that all policy-related issues should be removed from individual Rate applications and be

brought forward by the OEB in a generic policy forum, with proper notice given to all parties. PP suggested that the OEB conduct a consultation prior to establishing a generic proceeding to determine the linkages with other OEB policies, frameworks and decisions in order to identify any interdependencies and ways to deal with them in the Issues List.

The OEB will establish a protocol outlining the process for determining when an issue(s) in an application should be considered for a generic proceeding. The protocol will also outline the process for how and when the OEB will establish a generic proceeding for an issue that arises outside an application.



A protocol is being established for determining when an issue(s) should be considered for a generic proceeding.

## THEME 10

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### Active Adjudication

The Framework discussed how the OEB seeks to use active adjudication to proactively establish and control adjudicative processes and ensure that they are efficient, effective and procedurally fair. The OEB sought comments from stakeholders on whether there are other ways Commissioners can enhance their approach to active adjudication while ensuring procedural fairness. Most stakeholders were supportive of the OEB's efforts to proactively adjudicate proceedings and noted that the OEB has the 'tools' to manage this process, but expressed a desire to see more from the OEB.

This is exemplified by some stakeholders, such as the Canadian Manufacturers and Exporters and Electric Vehicle Society, commenting on a desire to receive more guidance from Commissioners on what is in scope and the specific areas of interest to the panel in a proceeding. In addition, SEC, EP, ED and LPMA noted that Commissioners can undertake active adjudication during oral hearings, and SEC further suggested that the OEB could consider piloting a pre-hearing conference (different than pre-application conferences as it would be on the record) to raise logistical issues, resolve minor issues of scope and process, and receive procedural guidance from the panel of Commissioners. A similar comment was noted by the Quinte Manufacturers Association which expressed a desire for pre-submission consultations with applicants to better inform and focus intervenor areas of interest. PP suggested that the OEB could establish a forum outside of proceedings to discuss relevant industry issues with Commissioners and to share information and opinions.

CHEC noted that having three Commissioners for each cost of service application would help with procedural fairness. The OEB has the Commissioner resources to consider different sizes of panels depending on the nature of an application.

As previously noted in this report, the OEB will continue to provide ongoing training to Commissioners, with a specific focus on having a common understanding of active adjudication and how it can be used to ensure proceedings are more efficient and effective, as part of **Near-term Project 3**. Also, the OEB will maintain a database on active adjudication actions undertaken in proceedings to track and assess the efficacy of approaches to active adjudication as part of **Near-term Project 4**.

The OEB will track and assess the efficacy of approaches to active adjudication in proceedings.

## THEME 11

### Scoping of Proceedings

The Framework discussed how the OEB manages the scope of proceedings predominantly with Issues Lists, and asked whether there are other tools that the OEB could employ to ensure that the scope of a hearing and the materiality of issues is clearer earlier in a proceeding. Stakeholders were generally supportive of the OEB's expansion of proactive guidance during proceedings, but also provided suggestions for the OEB's consideration.

For example, some stakeholders expressed a preference for the OEB to make greater use of Issues Lists in proceedings and the need to establish them early in a proceeding as it will help ensure an efficient and focused review of an application. However, other stakeholders suggested that if an Issues List is determined early in a proceeding, there may be the need to revisit it as new and important issues can potentially emerge as a proceeding progresses. This is best exemplified by the EDA noting that the OEB should consider the use of a two-step process of establishing an Issues List, whereby the Issues List is established early in the proceeding, but then reviewed later after discovery is completed.

Suggestions from stakeholders also noted the importance of intervenor involvement in the development of a proceeding's Issues List. For example, GEC commented that an Issues List should not be set before a party is granted intervenor status as intervenors play an important role in the process of establishing an Issues List.

The Association of Major Power Consumers in Ontario (AMPCO) referenced the OEB's previous consideration of prioritizing issues as primary or secondary. AMPCO noted that the details of such a system may be challenging to establish, but the resulting efficiency gains could justify such effort.

OPG commented that the OEB should provide written guidance on what evidence is helpful to Commissioners in making decisions, allowing applicants to decline to answer interrogatories, and the OEB to reduce cost awards, if it were to find that intervenors have pursued immaterial issues, advanced unsupported positions, or necessitated motions due to broad or out of scope requests.

In March 2021, the OEB established Standard Issues Lists for electricity and natural gas Leave to Construct applications.

In March 2021, the OEB established Standard Issues Lists for both electricity and natural gas Leave to Construct applications, and through the Framework’s **Near-term Project 5**, will develop and publish a Standard Issues List for electricity distribution Rate applications. This will help to provide enhanced transparency and predictability for parties, while still allowing for the Issues List to be refined, as needed, during a proceeding.

Commissioners can amend the Issues List if circumstances warrant. Also, through **Medium-term Project 10**, the OEB will undertake a review of the Issues List process. The project will examine the use of Issues Lists in applications that do not already have Standard Issues Lists, consider the appropriate time(s) for when an Issues List should be reviewed during a proceeding, and determine when parties should be involved in establishing an Issues List.

A Standard Issues List for electricity distribution Rate applications will be developed by the OEB.

# CONCLUSION

Together, with the involvement of stakeholders, the OEB remains committed to providing an effective and efficient adjudicative process while being deliberately mindful of our responsibility to maintain independent decision-making and procedural fairness. The OEB is appreciative of the input and engagement from stakeholders which helped inform this Action Plan. Through the projects identified in this Action Plan, the OEB is certain that it will be able to provide added, and targeted, improvements that will benefit the adjudicative process.



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