

# *Aiken & Associates*

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Christine E. Long  
Registrar and Board Secretary  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Long,

## **RE: Input on Virtual Hearings**

This letter is in response to the Ontario Energy Board (“OEB”) letter of June 17, 2020 in which the OEB indicated it was seeking input on virtual hearings using the Zoom technology.

I have had the opportunity to use the Zoom technology on numerous occasions since the end of March with family, friends and business associates. I have also used it in association with two recent OEB activities: the consultation on the deferral account associated with the impacts arising from the COVID-19 emergency (EB-2020-0133) and the renewable natural gas program (“RNG”) technical conference with Enbridge Gas Inc. (EB-2020-0066). I also participated in the Zoom meeting the week prior to the RNG meeting that was used as an information session to discuss how the technical conference would be held through Zoom. This information session was quite useful, in my view.

While there were some problems with video and audio for some people, these issues were quickly solved by the OEB’s IT staff, which did an excellent job in the sessions in which I have been involved.

The main video/audio issues were with individuals who were unaware that they had left their audio on after they were done speaking, resulting in conversations and background noises interfering with the sessions. My understanding is that the Zoom host has the ability to mute microphones, but I am not aware if this available to be done on a person by person basis or can only be done for everyone at the same time. Hopefully this issue can be resolved with more experience going forward.

The other thing that was an issue, especially in the COVID proceeding was use of the chat room to provide questions or indicate that a party wanted to follow up or ask a question. For the first half of the COVID session, various parties could see the comments in the chat room, while others could not. From my own experience, I could see comments that the host/presenters could not see, and I could not see comments that were seen by the host/presenters. It was indicated that we should send comments in the chat room to “all participants”. However, the only options I had in the first part of the session was “host” and “all presenters”. Others I talked to also indicated that they did not have an “all participants” option. About half way through the meeting the options available to me were updated and included the “all participants” option. However, based on people still not seeing all of the comments in the chat room, it appeared that not everyone had this option.

Based on my experience so far, here are the response to the three questions posed in the OEB’s June 17, 2020 letter.

1. What issues should the OEB consider as it plans for the ability to conduct a virtual hearing?

The biggest issue that the OEB is likely to need to consider is the ability of an applicant to bring up documents on the Zoon screen as they are being referenced. Some utilities will have no issue with this. For example, in the RNG technical conference, Enbridge managed this very well. However, it is likely that some of the small and midsized utilities may not be prepared for this.

Some of the more remote utilities and intervenors may not have reliable and uninterrupted internet access in order to effectively use Zoom without video and audio freezing, or dropping the connection. The OEB needs to consider whether all parties to a proceeding have the ability to effectively participate in a virtual hearing. For those that do not, an option should be available to participate by phone.

Another issue is whether there is anything that participants can do to assist the court reporters. The OEB should consult with the court reporters to see what they think would assist them in doing their jobs.

The OEB also needs to consider the potential for Zoom meetings to be recorded by parties and whether this is appropriate, and if not, how to ensure that the hearings are not being recorded.

2. Are there any technical obstacles which would prevent you from participating in a virtual hearing?

At this point, I have not encountered any technical obstacles which would prevent me from participating in a virtual hearing. One potential obstacle, however, has been noticed at the Zoom sessions I have attended. Parties are likely to have two computer screens in use when in a Zoom session, one for Zoom and one for any documents the party may be referencing while speaking. Often this results in the speaking turning their head and the level of the audio drops significantly if not speaking directly into a microphone built into the screen. This causes problems for the court reporter and for other participants who are listening.

Bandwidth does not appear to be a problem, assuming most participants have their video and audio off when they are not speaking. However, bandwidth may be an issue when working from a remote location.

3. Are there matters you think should be specifically discussed at a pre-hearing conference in advance of a virtual hearing?

The pre-technical conference Zoom meeting was very useful for parties to discuss how to jump in for follow up question during the RNG technical conference (i.e. turn on video and audio) while ensuring the video and audio were off if you were not questioning the witness panel. This appeared to be a useful way to introduce people to the Zoom sessions and to have IT iron out any issues that participants were having before a technical conference, hearing, consultation, settlement conference, etc. takes place. Again, OEB IT was very helpful in dealing with problems that several people were experiencing.

The matters such as ensuring that there is a break-out Zoom room for the witness panels and a separate break-out room for the intervenors. These rooms should be tested so that parties are aware how to get into and out of these rooms. This appeared to be a bit of an issue in the RNG technical conference.

A key item in a hearing (or technical conference, or settlement conference) is the ability to quickly and accurately bring up on the screen documents that are being referred to. In the RNG technical conference, Enbridge did this quickly and efficiently. This helped to reduce the time needed for the technical conference. During a hearing this will be equally important. It is important for the person(s) providing the documents on the screen to be well prepared in referencing the evidence, interrogatory responses, undertaking responses, and any other information that is being referenced. I would suggest as part of the pre-hearing Zoom meeting that this be tested out. I would also suggest that any party that plans on referring to a documents that is not part of the current proceeding (i.e. that is not part of the applicant evidence, intervenor evidence, interrogatory responses, undertaking responses, etc.) ensure that the applicant have an electronic copy that can be referenced and brought up on the screen.

Another matter that should be addressed is whether witnesses that are providing responses should be required to have their video on, so that parties can see the person providing the responses. While this may not be an issue in a consultation or even a technical conference, it is an issue with a hearing, as body posture is an important part of a response to a question.

Yours very truly,  
Randy Aiken

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