



Ontario
Energy
Board

JURISDICTIONAL REVIEW OF INTERVENOR PROCESSES AND COST AWARDS

DECEMBER 1, 2021

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INTRODUCTION

The Ontario Energy Board (OEB) has established an initiative to review its intervenor processes and cost awards practices. This is part of the OEB's commitment to become a top quartile regulator.

As part of this work, the OEB prepared the Chief Commissioner Plan which included an initiative to review intervenor processes and cost awards. This initiative includes the plan to complete a jurisdictional review of intervenor processes and cost awards to consider strategies for reducing overlapping or duplicative interventions, and an update to the *Rules of Practice and Procedure* (Rules) for granting intervenor status in a proceeding.¹ The OEB's current Rules state that a party must have a 'substantial interest' in a proceeding to be granted intervenor status. Greater clarity on what constitutes a 'substantial interest' would assist the OEB in determining who should be granted intervenor status.

A 2020 survey of stakeholders in the sector identified an interest in reviewing the intervenor process. In response, the OEB committed to "review intervenor processes to identify opportunities to operationalize efficiencies and to ensure process provides substantive value, while ensuring broad representation".²

The initiative to review intervenor processes is consistent with the mandate letter sent to the OEB Chair by the Ministry of Energy, Northern Development and Mines³ in 2020 and supported by the mandate letter received from the Minister of Energy in 2021.⁴ The current mandate letter sets a priority for the OEB to continue its work reviewing intervenor processes to identify opportunities to improve efficiency and effectiveness.

The OEB is moving forward by developing a Framework for the Review of Intervenor Processes and Cost Awards (OEB Framework). This jurisdictional review is the first step. It has been done to identify best practices with respect to how other regulators determine who should be granted intervenor status and cost awards, and if costs are awarded, how the amount is determined. The jurisdictional review is intended to assist in identifying different approaches to intervenor processes for consideration in improving the efficiency and effectiveness of the process.

This review focuses on intervenor processes related to adjudicative proceedings, not policy consultations. In addition, this is not a review of the pros and cons of other models of consumer representation in proceedings; although regulators that employed these models were canvassed as they may use best practices which the OEB could consider.

The Top Quartile Regulator Report identified the following key idea, "Regulators need access to external expertise and a spectrum of perspectives. Intervenor status has value because decision-making will be better informed. The value may be diminished because of the incentives to create issues or duplicate effort, but effective case management can mitigate this risk".⁵ The OEB Framework for reviewing intervenor processes considers this important point.

¹ Chief Commissioner Plan Initiatives, April 1, 2021, p. 6

² OEB Response to Ipsos Survey Results, March 20, 2021, p.5

³ Letter to Mr. Richard Dicerni, Chair of the OEB, October 1, 2020

⁴ Letter to Mr. Richard Dicerni, Chair of the OEB, November 15, 2021

⁵ Top Quartile Regulator Report, Phase 1 – March 2021, p. 47

This report provides information on how other regulators manage the intervenor process or if there is no formal intervenor program, how they ensure consumer input. The OEB will consider the results of the jurisdictional review and input from stakeholders to develop recommendations for making the OEB's intervenor processes more efficient and effective.

The OEB acknowledges and thanks Cynthia Chaplin at CAMPUT and the representatives of the members of CAMPUT for their assistance in preparing this report.

The Canadian regulators were asked to review their sections and feedback was received from Alberta Utilities Commission, British Columbia Utilities Commission, Canada Energy Regulator, Canadian Nuclear Safety Commission, Manitoba Public Utilities Board, New Brunswick Energy & Utility Board, Newfoundland and Labrador Board of Commissioners and Public Utilities, Northwest Territories Public Utilities Board, Nova Scotia Utility and Review Board, Prince Edward Island Regulatory and Appeals Commission and Régie de l'énergie. The OEB has made best efforts to reflect information as accurately as possible as at the time it was collected. As work progresses on the OEB Framework, the OEB welcomes any input from stakeholders on this jurisdictional review.

A summary of the results for the Canadian regulators is provided in Appendix A. A full jurisdictional review of cost award tariffs was not done, however, Appendix B provides a sample of current hourly rates paid by several regulators.

BACKGROUND

In 2013, the OEB conducted a review of the framework governing the participation of intervenors in proceedings.⁶ Phase One of the review examined whether there were modifications that should be made within the existing framework to the OEB's approach to intervenor status, cost eligibility and cost awards. One of the questions asked of stakeholders was:

What factors should the Board consider in determining whether a person seeking intervenor status has a "substantial interest" in a particular proceeding before the Board? For instance, should the Board require a person seeking intervenor status to demonstrate consultation or engagement with a constituency directly affected by the application?

A summary of responses to this question is provided in Appendix C and may inform this review.

After considering stakeholders' input, several modifications to the intervenor framework were made to provide for greater transparency, clearer accountability and expectations regarding the participation by intervenors in OEB proceedings:

- An amendment to the Rules requiring intervenors to provide information regarding the appointment and authorization of their representative in OEB proceedings
- Frequent intervenors were to file, for posting on the OEB's website, general organizational information that might otherwise be included in letters of intervention on a case-by-case basis⁷
- Amendments to the *Practice Direction on Cost Awards* were made to clarify language in relation to the interests represented by parties eligible to apply for a cost award, and revisions to the forms used for cost claim purposes were made to provide more detailed information in support of the costs claimed in a proceeding.

⁶ EB-2013-0301, Review of the Framework Governing the Participation of Intervenors in Board Proceedings, Completion of Phase One, April 24, 2014

⁷ See Annual filings of frequent intervenors

Phase Two of this review of intervenor processes was incorporated into a broader consumer engagement framework.⁸ A jurisdictional review was done at that time to identify best practices for consumer engagement and representation. The OEB developed a suite of tools to give residential and small business customers information and access to OEB adjudicative processes, such as requiring regulated utilities to engage with their customers in the development of plans and budgets when preparing rate applications, holding community meetings for each cost-based rate application and establishing a Consumer Panel.⁹

Phase Two also identified and evaluated alternative models to the OEB's current approach to engaging consumers, through the jurisdictional review. The review noted that the OEB has had a well-funded intervenor model for decades. With this model, associations and other organizations participate in OEB proceedings on behalf of various customer groups/classes and provide broad perspectives, expertise and challenges on applications before the OEB. The OEB concluded that directly impacted parties, or the associations and organizations that represent them, would continue to be able to intervene in the OEB's processes in accordance with the current Rules.¹⁰

⁸ EB-2015-0159, Giving Energy Consumers a Stronger Voice in OEB Adjudicative Processes – presentation, April 13, 2016

⁹ The OEB's path to modernization includes developing a new and purposeful approach to stakeholder engagement. As a result, the Community Meetings and Consumer Panel initiatives are currently on hold.

¹⁰ EB-2015-0159, Giving Energy Consumers a Stronger Voice in OEB Adjudicative Processes – presentation, April 13, 2016

JURISDICTIONAL REVIEW

CAMPUT, the association of Canadian federal, provincial, and territorial energy and utility regulators, conducted a Comparative Analysis Report for CAMPUT on Intervenor Funding Programs.¹¹ While focused more on the costs of intervenor funding than the test for approving intervenor status, the report does provide a good starting point for the review of intervenor processes across Canada. Information from the CAMPUT report was updated as required, e.g., Canadian Energy Regulator (CER) information replacing the National Energy Board and enhanced by focusing on a review of the criteria used to grant intervenor status, including obtaining greater clarity on what constitutes ‘substantial interest’.

Processes for participation in proceedings were also reviewed for the Australian Energy Regulator (AER), OFGEM, the energy regulator in the United Kingdom, and a sample of American regulators: Federal Energy Regulatory Commission (FERC), New York Public Service Commission and the California Public Utilities Commission. The following information was recorded for each regulator, if it was applicable and available:

1	Governing Rules
2	How do parties request to be an intervenor?
3	Is there a Consumer Advocate?
4	How do parties object to a request for intervenor status?
5	What is the test for being granted intervenor status and where is it set out?
6	Is there a requirement for intervenors to work together?
7	If denied for intervention status, how does a party request a review?
8	Example of an intervenor being denied
9	Who is not eligible for cost awards?
10	Who pays for costs of intervention?
11	What is the test for determining cost awards?
12	Other information

¹¹ October 2018

It should be noted that some of the regulators reviewed have oversight over more than just energy utilities; for example, the Manitoba Public Utilities Board (Manitoba PUB) also regulates vehicle insurance, some water and wastewater utilities and payday loans. In addition, there can be significant differences in the number of entities over which a regulator has oversight. In 2020, Ontario was approving rates for 74 entities compared to the British Columbia Utilities Commission (BCUC) which oversees 17 utilities.¹² See Appendix D for a listing of the number of electricity and gas utilities each regulator oversees.

These differences impact the number of proceedings with possible intervenors and costs awards that each regulator handles on an annual basis. For example, in 2019-2020 Ontario had 55 proceedings & consultations in which intervenors participated¹³, compared to the PUB which had an annual average of less than 10 proceedings in which cost awards were granted.¹⁴ Differences in scale can affect how the regulator chooses to manage its intervenor process.

¹² <https://www.bcuc.com/WhatWeDo/EnergyUtilities>

¹³ <https://www.oeb.ca/sites/default/files/Energy-at-a-Glance-2019-2020.pdf>

¹⁴ <http://www.pubmanitoba.ca/v1/proceedings-decisions/appl-previous/index.html>

CANADIAN REGULATORS WITH INTERVENOR FUNDING PROGRAMS

Alberta Utilities Commission (AUC)

The AUC regulates Alberta's investor-owned electric, gas, water utilities and certain municipally owned electric utilities. It also regulates the routes, tolls and tariffs of energy transmission through utility pipelines and electric transmission and distribution lines. Companies who propose to construct or rebuild electric generation, transmission or distribution facilities in Alberta, must apply to the Commission for siting approval and it provides an adjudicative function for issues arising in Alberta's electric and natural gas markets.

The AUC has separate cost regimes for siting approvals and rate setting.

The AUC uses its cost awards process to control intervenor¹⁵ participation and potential duplication. In addition to the Consumer Advocate, there are usually limited intervenors in proceedings.¹⁶ The AUC is currently seeking stakeholder feedback on whether to broaden eligibility for cost awards for rates proceedings. For siting approvals, local landowners within close proximity to proposed infrastructure are generally eligible for cost recovery.

Governing Rules

Sections 21 (Costs of proceedings) and 22 (Local intervenor costs) of the *Alberta Utilities Commission Act*; Rule 001 Rules of Practice; Rule 009 Rules on Local Intervenor Costs; Rule 022 Rules on Intervenor Costs in Utility Rate Matters.

How do parties request to be an intervenor?

Potential intervenors are required to file a written statement of intent to participate (Form RP2, See Appendix E for example). The statement must contain a brief description of their interest in the proceeding and an explanation of their position, including information in support of that position.

Is there a Consumer Advocate?

Yes, the Office of the Utilities Consumer Advocate (UCA) was established in October 2003. The UCA's responsibilities are outlined in the *Government Organization Act*, Schedule 13.1 and the *Utilities Consumer Advocate Regulation*. The UCA, which represents the interests of residential, farm, and small business consumers in regulatory proceedings helps to reduce duplication of intervenor efforts and regulatory hearing costs. The AUC recommends that concerned consumers contact the Office of UCA who can act as an intervenor in rate proceedings on their behalf. The AUC does allow those who are not represented by the UCA and would like to participate to apply to be an intervenor. The Office of the UCA was established as part of the department under the Minister of Service Alberta and consists of the Utilities Consumer Advocate and such staff as the responsible Minister determines. The UCA generally restricts its participation to rates proceedings.

In 2020/2021 fiscal year, the UCA intervened in 67 AUC proceeding at a total cost of \$3.1M.¹⁷

¹⁵ The two spellings: 'intervenor' and 'intervener' are both used by regulators. For purposes of consistency in this report, only the one spelling 'intervenor' has been used.

¹⁶ Conversation with staff at the AUC, July 28, 2021

¹⁷2020-2021 Annual Report: <https://ucahelps.alberta.ca/documents/uca-annual-report-2020-21.pdf>

How do parties object to a request for intervenor status?

In rates proceedings, the AUC differentiates between eligibility to intervene and eligibility for funding. While the AUC generally allows all ratepayers to intervene in its proceedings, it restricts cost eligibility through Rule 009. For rates proceedings, parties can object to a request for intervenor status however generally do not because of the AUC's generous approach to standing.

Objections to intervenor status are more common in siting proceedings. Those objections generally focus on the prospective party's proximity to the project. The Commission frequently denies intervenor status to persons that cannot demonstrate the potential for direct and adverse project effects.

What is the test for being granted intervenor status and where is it set out?

Section 9 of the *Alberta Utilities Commission Act* sets the test for standing in AUC proceedings. Essentially, that provision requires the Commission to hold a hearing when a person establishes that they have rights that may be directly and adversely affected by the Commission's decision on an application.

Rule 001 -11 states that:

11.1 After receiving and examining a statement of intent to participate from a person, the Commission may (a) direct the person to provide additional information to the Commission; or (b) direct the applicant or the person to make further submissions, either orally or in writing.

11.2 If the Commission is of the opinion that a person has demonstrated the existence of a right or rights that may be directly and adversely affected by the Commission's decision on the proceeding, the Commission shall set the proceeding down for a hearing.

11.3 The Commission may decide that the person will not be heard if the person did not demonstrate that the Commission's decision on the proceeding may directly and adversely affect the person's rights.

Is there a requirement for intervenors to work together?

The Commission encourages parties with standing to band together to form a group, because the participation of groups contributes to the efficiency of a hearing and allows intervenors to share the work of preparing and presenting an intervention. This is done through costs awards which are affected by efficiencies that are gained, or which should have been gained by a co-operative approach among intervenors and intervenor groups.¹⁸

If denied for intervention status, how does party request a review?

A party denied standing can ask the AUC to review that decision based on error of fact or mixed fact and law. Such a party may also ask the Alberta Court of Appeal for permission to appeal the AUC's standing decision.

Example of an intervenor being denied

See Ruling on Standing Related to Proceeding 24718

¹⁸ Report of the AUC Procedures and Processes Committee, August 14, 2020, p. 46

Who is not eligible for cost awards?

In a rate proceeding the following types or classes of intervenors are ineligible to claim costs unless the Commission orders otherwise:

- (a) An out-of-province utility
- (b) Electric generators, including associations representing electric generators
- (c) A utility intervening in another utility's application
- (d) Business, commercial, institutional, or industrial entities including associations of these entities
- (e) Municipalities including associations of municipalities
- (f) Rural electrification associations including associations of rural electrification associations
- (g) Rural gas co-ops including associations of rural gas co-ops¹⁹

In a facility proceeding, persons that cannot show the potential for direct and adverse effects from the project are ineligible.

Who pays for costs of intervention?

Applicants are ordered to pay intervenor costs in applications.

What is the test for determining cost awards?

In a rates proceeding, the AUC may award costs to an intervenor who has or represents a 'substantial interest' in the proceeding and who does not have the means to raise sufficient financial resources to enable the intervenor to present its interest adequately in the proceeding.²⁰ In a facilities proceeding, the Commission may award costs to a person who meets the definition of a local intervenor as set out in the *Alberta Utilities Commission Act*.

The AUC assesses all costs claimed by intervenors to determine if they are reasonable and whether the associated work contributed to a better understanding of the issues before the Commission.

The AUC also considers the following factors when assessing a cost claim.

Whether the claimant:

- (a) Asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by the relevant witness.
- (b) Made reasonable efforts to ensure that its evidence was not unduly repetitive of evidence presented by another participant.
- (c) Made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants.

¹⁹ Rule 022, Section 4

²⁰ Rule 022, Section 3.1

- (d) Presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time.
- (e) Failed to comply with a direction of the Commission, including a direction on the filing of evidence.
- (f) Submitted evidence and argument on issues that was not relevant.
- (g) Needed legal or technical assistance to take part in the hearing or other proceeding.
- (h) Engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to the applicant or other participants.
- (i) Failed to comply with these rules or Rule 001: Rules of Practice.

Other information

Intervenor cost rules and practices were reviewed in 2008 (Bulletin 2008-16) and addressed in the more recent Report of the AUC Procedures and Processes Review Committee.²¹ Recommendations of this Report related primarily to rates proceedings and proposed that the Commission should:

- discourage non-expert opinion evidence through reduction of costs allowed to utilities and eligible intervenors (Recommendation 15)
- through its case management powers, more assertively hold all parties to the scoped issues and guard against repetitious evidence and submissions (27)
- rigorously apply to cost claims the considerations governing eligibility and quantum recovery set out in Section 11 of Rule 022 (29)

The AUC is commencing a Rule 022 review in the near future.

British Columbia Utilities Commission (BCUC)

The BCUC is responsible for regulating BC's energy utilities, the Insurance Corporation of BC's compulsory automobile insurance rates, intra-provincial pipeline rates, and the reliability of BC's electrical transmission grid. In March 2020, the BCUC was also named as the Administrator of BC's *Fuel Price Transparency Act*.

The BCUC has recently established the Residential Consumer Intervenor Association (RICA) in an effort to increase representation of residential ratepayers in BCUC proceedings. Interveners are eligible for cost awards after participating in BCUC processes; these cost awards are used to reduce duplication of intervenors' work. The BCUC has recently prepared revised rules of practice and procedure for cost awards as outlined below.

²¹ August 14, 2020

Governing Rules

Utilities Commission Act S.118, Rules of Practice and Procedure G-15-19, December 17, 2018, Part II, Participant Assistance/Cost Award (PACA) Guidelines (Order Number G-97-17), (see additional information below).

How do parties request to be an intervenor?

A Request to Intervene Form can be completed on the BCUC's website or by email or mail.

Is there a Consumer Advocate?

Yes, the RICA, was created in January 2021 to represent the interests of all residential customers for electricity, natural gas, and heating in proceedings before the BCUC in a non-discriminatory manner. The BCUC was concerned that the perspectives of residential ratepayers were not represented by any particular group, with the appropriate expertise in its proceedings. Industrial and commercial customers were well represented however, residential customers were not.

The BCUC wished to enrich the pool of intervenors that participated in its proceedings, so after an environmental scan of Consumer Advocate models in Canada and the United States, it issued a Request for Proposal to set up an independent nonprofit organization that would be able to develop the expertise to represent residential ratepayers. Midgard Consulting Inc. won the contract and in January 2021 established the RCIA. The contract is for three years at \$200k/year plus startup costs to develop and operate the program, reimbursement for the costs related to incorporating the entity, purchasing licenses and external financial audits. The BCUC treats the RCIA in the same manner as any other intervenor, e.g., it still needs to apply to become an intervenor. Costs for the RCIA to intervene in proceedings will be paid by the applicant utility under the same rules as other intervenors.

How do parties object to a request for intervenor status?

Parties can make submissions with respect to a request for intervenor status.

What is the test for being granted intervenor status and where is it set out?

Persons requesting intervenor status must demonstrate to the satisfaction of the BCUC that they are directly or sufficiently affected by the BCUC's decision, or that they have experience, information or expertise relevant to a matter before the BCUC that would contribute to the BCUC's decision-making. The BCUC may refuse a request for intervenor status for reasons, including but not limited to, that the request:

- is frivolous, or vexatious
- does not meet the requirements as noted above
- is irrelevant or is not in response to issues addressed in the proceeding
- is not filed in accordance with the rules²²

²² Rule 9.04

Is there a requirement for intervenors to work together?

Intervenors are expected to take reasonable efforts to avoid the duplication of evidence. The BCUC encourages and may require an intervenor to coordinate with other intervenors who represent substantially similar interests. This can be done through the reduction of costs awards.

If denied for intervention status, how does a party request a review?

If denied intervenor status a party could submit a request to the Commission Secretary seeking a review of the decision. However, the norm is that most requests for intervenor status are accepted; very few are denied.

Example of an intervenor being denied

The BCUC has denied a request for intervenor status based on the individual representing a group but not providing clear evidence that the purported members of the group are ratepayers who want to be represented in this proceeding, The BCUC did note that it would consider an application to intervene as an individual.²³

Who is not eligible for cost awards?

There are no specific parties identified that are not eligible for cost awards.

Who pays for costs of intervention?

Normally, the utility applicant pays the intervenor costs however the BCUC has discretion to also allocate cost awards without charging amounts back to a utility.

What is the test for determining cost awards?

A BCUC Panel will determine whether a Participant is eligible or ineligible for an award. In determining an award of all or any portion of a Participant's costs, the BCUC Panel will first consider whether the Participant has a substantial interest in a substantial issue in the proceeding. If this criterion is not met, the Participant will typically not receive a cost award except, possibly, for out-of-pocket disbursements. Except in limited circumstances, it is expected that only ratepayer groups will establish a "substantial interest in a substantial issue" to be eligible for an award in a revenue requirement proceeding.²⁴

The Commission Panel may, in limited circumstances, provide preliminary comments either directly to participants or through a staff letter regarding the 'substantial issue' requirement.²⁵

Other information

On July 6, 2021, in developing a clear and efficient system for administering payment of costs incurred by those participating in a BCUC proceeding, draft revised rules of practice and procedure for Participant Cost Award (PCA) applicants were issued for comment. A new PCA Application Form and a new PCA Interim Cost Application Form, that would provide a streamlined approach to submitting participant cost information, were proposed.

²³ BC Hydro F2017–F2019 REVENUE REQUIREMENTS, Exhibit A-11, October 25, 2016

²⁴ Participation Assistance/Cost Award Guidelines, Section 1

²⁵ *Ibid*, Section 2

Manitoba Public Utilities Board (Manitoba PUB)

The PUB establishes rates for Manitoba Hydro, Centra Gas, propane supplied by Stittco Utilities Ltd, compulsory driver and vehicle insurance provided by Manitoba Public Insurance and rates charged by 240 municipal and private water and wastewater utilities. The Manitoba PUB regulates private natural gas brokers and monitors the construction and operation of gas pipelines that are subject to provincial jurisdiction. Upon request of the provincial government the Manitoba PUB makes recommendations to government regarding the regulation of payday lenders and payday loans.

The Manitoba PUB uses a Pre-Hearing Conference to determine intervenor status and establish the scope of a proceeding. Intervenor status has been denied due to duplication of issues with other intervenors or the interests do not fall within the scope of the approved issues list. In additions, costs awards are used to control duplication of work.

Governing Rules

Rules of Practice, March 14, 2007, Intervenor Cost Policy for General Rate Applications, September 28, 2018

How do parties request to be an intervenor?

Parties use an online form to request intervenor status.

Is there a Consumer Advocate?

No, although as noted below the Public Interest Law Centre (PILC) can receive funding from Manitoba Legal Aid to intervene in rate cases.

How do parties object to a request for intervenor status?

At a Pre-Hearing Conference (see Other Information) the prospective intervenors provide submissions on their requests for intervention, indicate issues of primary consideration in the hearing, and identify possible witnesses for their proposed interventions. The Board also hears submissions from the applicant with respect to the applications for intervenor status, as well as providing an overview of its filing. All parties provide submissions respecting the scope of the process and the issues to be included.

What is the test for being granted intervenor status and where is it set out?

Before determining whether to award intervenor status to any party or person, the Board will review the written request for intervention to determine:

- a clear understanding of the issues to be addressed and purpose for the requested intervention
- any relevant information that may be useful in explaining or supporting the views of the person requesting intervention
- the extent of the requested intervention in the information request, evidentiary and argument procedures²⁶

²⁶ Rules of Practice and Procedure, Section 27(2)

Is there a requirement for intervenors to work together?

The Manitoba PUB expects intervenors to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, and expert witnesses. They may adjust cost awards where any duplication appears to have occurred. In some cases, the “Board may recommend or order that intervenors with common interests present a joint intervention.”²⁷

If denied for intervention status, how does a party request a review?

If denied intervenor status, a party can file an application to review and vary an Order. The request goes to the same panel which will determine if there is new or additional information would cause it to reverse its position.

Example of an intervenor being denied

Manitoba PUB have denied intervenor status primarily on the basis that the party does not represent an interest beyond its own.

Order 67/13 denied intervenor status to Pimicikamak at Cross Lake (PLC) despite some of the issues they identified being in scope because these issues were duplicitous of issues identified by other Intervenor. PLC was permitted to seek a coalition with approved intervenors.²⁸

Who is not eligible for cost awards?

There are no specific parties identified that are not eligible for cost awards.

Who pays for costs of intervention?

Intervenor costs paid by the utility. In addition, the Manitoba PILC also receives funding under section 4(2) of the *Legal Aid Manitoba Act*, which states that Legal Aid Manitoba may provide legal aid to a group in any matter that in its opinion involves an objective or interest that is common to the members of the group and relates to an issue of public interest including any consumer issue.

What is the test for determining cost awards?

The Board may award costs to an intervenor who has:

- made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the Board
- participated in the hearing in a responsible manner and cooperated with other Intervenor who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention
- represented interests beyond their sole business interest, a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.²⁹

²⁷ Intervenor Costs Policy, Section 5.0

²⁸ Order 67/13, Needs for and Alternatives to Review of Manitoba Hydro’s Preferred Development Plan, June 11, 2013

²⁹ Intervenor Costs Policy for General Rate Applications, Section 3.0

Other information

In most proceedings the Manitoba PUB holds a Pre-Hearing Conference to

- identify the issues that are included in the scope of the hearing
- identify and approve appropriate intervenors who are to assist the Board in the hearing
- finalize a process and timetable for the orderly exchange of evidence and the conduct of the hearing

Once their status is approved, intervenors are required to file a budget for review by the staff of the Board. The staff may discuss the appropriateness of the proposed budget with a representative of an intervenor, but the discussions do not bind the Board panel that receives the cost award application after the hearing ends.

In 2019, the Manitoba PUB determined that it needed to revise its Intervenor Costs Policy to bring greater clarity to the process, simplify it and reduce the administrative and adjudicative work associated with intervenor budgets, invoices and cost award. As a first step, the Board developed an Interim Policy which was expected to save money through:

- tighter control on intervenor work products and control budgets by PUB staff
- a mandatory requirement for intervenors to collaborate on common issues to avoid duplication of resources and save time and costs
- changes to intervenor scope of work, or the budget must be reviewed by PUB staff and acknowledged, reducing the administrative work.³⁰

The Interim Policy continues in effect and will be incorporated into the Board's Rules of Practice and Procedure which will undergo a review in 2022.

³⁰ <http://www.pubmanitoba.ca/v1/about-pub/pubs/2019-20-annual-report-final.pdf>

Northwest Territories Public Utilities Board (NWTPUB)

The NWTPUB is responsible for the regulation of public utilities in the NWT.

Governing Rules

Section 26 of the *Public Utilities Act*, Rules of Practice and Procedure R-047-96 and Rules on Costs

How do parties request to be an intervenor?

Rule R-047-96 14 states that:

- any interested person or organization may give notice of its desire to intervene in a proceeding by filing with the secretary and serving on the applicant, on or before the date specified in the notice, a written request to intervene. The request to intervene shall be in Form 1 of the Schedule and shall:
 - clearly and briefly describe the nature of and reasons for the proposed intervention
 - where a hearing is to be held, state clearly whether the person or organization intends to appear at the hearing and to participate in the leading and testing of evidence
 - set out (i) the name, mailing address, address for personal service and telephone number of the person or organization or agent authorized to receive documents on behalf of the person organization, and (ii) any address or number at which the person, organization or agent receives electronic transmissions
 - state whether an application for costs will be made. Promotion of intervenor program is done in newspapers, website and mailing list to interested parties

Is there a Consumer Advocate?

No

How do parties object to a request for intervenor status?

The applicant may object to the intervention by a party either based on the grounds the intervenor does not meet the cost eligibility criteria or that there would be duplication of effort with other parties.

What is the test for being granted intervenor status and where is it set out?

Before determining whether intervenor status should be granted to any person or organization, the Board reviews the request to intervene and may contact or meet with the person or organization requesting intervenor status to:

- ensure that the Board and the person or organization have a clear understanding of the issues to be addressed and the purpose for the intervention
- obtain any relevant information that may be useful in explaining or supporting the views of the person or organization
- determine to what extent the person or organization will participate in the proceeding³¹

³¹ Rules of Practice and Procedure R-047-96 Section 14 Part 4²⁷ Intervenor Costs Policy, Section 5.0

Is there a requirement for intervenors to work together?

The Board may direct intervenors with similar interests to present a joint intervention and where intervenors intend to seek an award of costs, they shall participate in any Pre-Hearing conference to confer with other intervenors.³²

If denied for intervenor status, how does a party request a review?

If denied for intervenor status, the intervener may request review and variance of the Board's decision.

Example of an intervenor being denied

This has not occurred in recent times.

Who is not eligible for cost awards?

Organizations that have access to other sources of funding for their intervention or salaried employees of Government or non-Governmental entities would not be eligible for cost awards.

Who pays for costs of intervention?

Intervenor costs paid by the applicant utility.

What is the test for determining cost awards?

The Board may award costs to an intervenor who:

- made a significant contribution which was relevant to the proceeding, and which lead to a better understanding by all parties of the issues before the Board
- participated in the hearing in a responsible manner and cooperated with other intervenors having common objectives in the outcome of the proceeding in order to avoid a duplication of intervention
- made a reasonable effort to secure alternative funding where such funding was available to the intervenor
- had a substantial interest in the outcome of the proceeding and represented the interests of a substantial number of ratepayers³³

Other information

NWTPUB's Rules on Costs includes a section on the balance the Board seeks between encouraging intervention and the cost to the ratepayer for the proceeding:

The Board has a duty to the public to ensure costs are reasonably and prudently incurred. While costs are awarded to encourage participation and intervention, the Board is equally concerned that ratepayers should not bear the costs of proceedings which serve no useful purpose in an applicant's case. A balance must be maintained between the need for effective proceedings and the costs of the regulatory process.³⁴

³² *Ibid*, Parts 10 & 11

³³ Rules of Practice and Procedure R-047-96 Section 33

³⁴ Northwest Territories Public Utilities Board Rules on Costs, Section 4

Canada Energy Regulator (CER)

The CER regulates pipelines and power lines for their complete life cycle (construction, operation and retirement), energy development and trade.

The CER's participant funding program (PFP) facilitates the participation of the public in proceedings but is very much focused on ensuring that the Indigenous peoples of Canada and Indigenous organizations are represented. The PFP is administered independently of the public hearing.

Governing Rules

Paragraph 75 of the *Canadian Energy Regulator Act* (CER Act), the CER must establish a participant funding program to facilitate the participation of the public — and, in particular, the Indigenous peoples of Canada and Indigenous organizations — in public hearings under section 52 or subsection 241(3) and any steps leading to those hearings.

As per subsection 10 (2) of the CER Act, the Regulator is for all purposes an agent of Her Majesty in right of Canada. With respect to projects that are not designated under the Impact Assessment Act but that are within the CER mandate, the CER may offer funding to facilitate participation of Indigenous peoples of Canada and Indigenous organizations in:

- i) public hearings and any steps leading to those hearings; and
- ii) Crown related activities that further reconciliation with First Nations, the Metis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, co-operation and partnerships.

With respect to participation, the CER Act contains provisions regarding process and public participation. Section 74 states:

74. The Regulator must establish processes that the Regulator considers appropriate to engage meaningfully with the public – and, in particular, with the Indigenous peoples of Canada and Indigenous organizations – when public hearings are held under section 52 or subsection 241(3).

Subsection 183(3) is found in Part 3 of the CER Act, which deals with pipelines. Section 183 deals with certificate applications for pipelines. (There is no equivalent provision for power lines or offshore renewable energy projects.)

183(3). Any member of the public may, in a manner specified by the Commission, make representations with respect to an application for a certificate.

The CER Act does not contain an express standing test for facility applications, unlike the previous *National Energy Board Act* (i.e., section 55.2).

How do parties request to be an intervenor?

Parties submit a Request to participate online. The online system is currently being redesigned and should be launched in the coming months.

Is there a Consumer Advocate?

Not Applicable

How do parties object to a request for intervenor status?

The practice is for the Commission to make decisions independently on Intervenor standing without input from parties.

What is the test for being granted intervenor status and where is it set out?

The Commission of the CER does not have a standing test for participation in our public hearings, unlike the previous *National Energy Board Act* (i.e., section 55.2). The CER Act states that regulatory hearings and decision-making processes should be fair, inclusive, transparent and efficient.

The Commissioners have the discretion on each public hearing to determine how people can participate in our public hearings (e.g., intervenors vs. commenters). The Commissioners provide reasons for all decisions about participation. The Commission is currently developing external guidance on this topic.

Is there a requirement for intervenors to work together?

Funding agreements are issued to recognized entities or named individuals versus partnerships. Recipients are free to seek additional sources of funds and collaborate but there is no requirement to do so. Recipients must disclose other government funds received for the same purpose.

If denied for intervenor status, how does a party request a review?

In the unlikely event the Commission denies Intervenor request, they would grant Commenter status and allow the party to file a letter of Comment. A party could make an application to the Commission explaining why they disagree with decision and request a review.

Example of an intervenor being denied

There is not a recent example under the CER Act.

Who pays for costs of intervention?

Intervenors pay for their costs. They may receive funding or other support from proponents to support the project engagement efforts. The CER offers participant funding to eligible recipients. The actual costs are generally recovered across the regulated industry.³⁵

Who is eligible for PFP?

The following individuals or groups can apply for participant funding:

- Indigenous peoples of Canada and Indigenous organizations with a direct interest in the project, impact on claims or rights, and/or providing traditional knowledge. Such as First Nation, Metis, Inuit, or Tribal Council
- Individuals with a direct local interest in the project. Such as a landowner or land user, even if they operate a non-energy business. Landowners will be treated as an individual regardless of the number of people that comprise the ownership (e.g., family trust, co-owners)
- Group of Individuals with a direct local interest in the project. Such as an unincorporated local community group

³⁵ For those proceedings covered by CER Cost Recovery Regulations i.e., Oil, Gas, Electricity. CER now offers PFP for northern hearings and offshore applications for which there is currently no cost recovery mechanism.

- Non-industry³⁶ not-for-profit³⁷ group with a direct local interest or expertise on the anticipated effects of the project. Such as an incorporated environmental or landowner group, agricultural organization, condo board, board of trade or chamber of commerce, associations of municipalities or first responders. Provided the group does not represent the energy industry or has been created by a government statute.

Who is not eligible for PFP?³⁸

The following groups cannot apply for participant funding:

- Municipal, provincial and federal governments (except Indigenous) and government entities created by statute
- Organizations in the Energy Industry (oil, gas, or electricity sector). Such as: upstream, downstream, shippers, pipelines, marketing, utilities, operators or direct service providers
- For profit companies
- Landowners with a business that can reasonably be assumed to have the means to participate³⁹

What is the test for determining PFP awards?

The CER establishes funding maximums for grants and contributions by recipient type prior to announcing the funding opportunity. Determining factors may include:

- the early engagement plan for the project
- the hearing process for the project
- the size and location of the project
- the diversity of issues likely to be involved in the project hearing
- the level of public interest, including that of potentially affected Indigenous groups, in the project
- the number of funding applicants that may be expected
- the PFP's annual budget

³⁶ Non-industry means not energy industry

³⁷ Not-for-profit means non-profit or charity as defined by the Canada Revenue Agency

³⁸ For CER, the term Cost awards applies to a different cost mechanism for intervenors in other types of hearings e.g., Detailed Route, Compensation. Information can be found at <https://www.cer-rec.gc.ca/en/consultation-engagement/land-matters-guide/land-use-compensation.html>

³⁹ <https://www.cer-rec.gc.ca/en/applications-hearings/participate-hearing/participant-funding/index.html>

For 2021, the approved maximums are as follows:

Funding Type	Early Engagement (s183, some s214, IPL cert.)	s183 Hearing Process	Other CER Act Hearing Process	Northern Hearing Process (COGOA, OGOA)
Indigenous Peoples	Early engagement Grant \$5k	Intervenor Contribution \$100k Non-Intervenor Contribution for Crown activities \$20k	Intervenor Contribution \$60k Commenter Grant \$5k	Intervenor Grant \$20k Commenter Grant \$5k Crown Consultation Grant \$3k
Intervenors (group)	Not applicable	Intervenor Contribution \$80k	Intervenor Contribution \$40k	Not applicable
Intervenors (individual)		Intervenor Contribution \$12k	Intervenor Contribution \$6k	

PFPA awards to Indigenous peoples are based on the Crown list and their desire to participate in the Crown Consultation process and/or the hearing. They simply need to express this desire to participate and sign the funding agreement.

For non-indigenous Intervenors they must be on the approved list of parties issued by the commission and submit an application form by the funding deadline.

Other information

At the CER, the applicant is expected to consult with parties before filing an application, in addition, after the applicant informs all potentially affected persons and communities that an application is to be filed the CER engages the public and Indigenous peoples to identify issues.

<https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/early-engagement-guide/>

<https://www.cer-rec.gc.ca/en/consultation-engagement/land-matters-guide/brochures/cer-energy-projects-you.pdf>

<https://www.cer-rec.gc.ca/en/consultation-engagement/land-matters-guide/brochures/cer-energy-projects-indigenous-peoples/cer-energy-projects-indigenous-peoples.pdf>

Canadian Nuclear Safety Commission (CNSC)

The CNSC regulates the development, production and use of nuclear energy, the production, possession, use and transport of nuclear substances, and the production, possession and use of prescribed equipment and prescribed information.

Governing Rules

The *Jobs and Economic Growth Act* established the Participant Funding Program, (PFP), SOR/2000-211 - Canadian Nuclear Safety Commission Rules of Procedure

How do parties request to be an intervenor?

The Notices published for every public Commission proceeding (meetings and hearings) identify if interventions will be accepted and how people can request to intervene.⁴⁰ Every intervention request must demonstrate an interest or expertise in the matter being heard.⁴¹ Links to the online intervention request form and contact information for the Senior Tribunal Officer are provided in the published Notices.

For Commission proceedings with interventions, the published Notice includes information on the availability of funds through the PFP, a link to the CNSC's online PFP information, application form, and the deadline for applying. The applicant must submit the PFP application form to the PFP inbox before the application deadline. The CNSC website includes detailed PFP eligibility criteria, application and funding award processes and a PFP Guide. PFP-funded intervenors are required to intervene in the Commission proceedings in writing and/or orally.

Is there a Consumer Advocate?

No

How do parties object to a request for intervenor status?

Each request to intervene must include the information described in section 19 of the CNSC Rules of Procedure Rules and the Commission may permit interventions by persons who have an interest in the matter being heard or have expertise or information that may be useful to the Commission. The Rules of Procedure do not include an appeal mechanism if a request to intervene is denied.

What is the test for being granted intervenor status and where is it set out?

The Commission may permit the following persons to participate as intervenors at the hearing in the manner and to the extent that the Commission considers will enable it to determine the matter before it in a fair, informal and expeditious manner:

- a person who has an interest in the matter being heard, or
- a person who has expertise in the matter or information that may be useful to the Commission in coming to a decision⁴²

⁴⁰ Canadian Nuclear Safety Commission Rules of Procedure, Subsections 17(4) (d), (e) & (f)

⁴¹ Canadian Nuclear Safety Commission Rules of Procedure, Section 19(1)

⁴² Canadian Nuclear Safety Commission Rules of Procedure, Subsections 19(1) (a) & (b)

Is there a requirement for intervenors to work together?

There is no requirement in the CNSC Rules of Procedure requiring separate intervenors to work together. Individuals and organizations seeking funding for similar activities are encouraged to work together on their proposals when feasible.⁴³

Who is not eligible for cost awards?

Individuals, Indigenous groups and not-for-profit organizations are eligible for funding.

Who pays for costs of intervention?

Participant funding costs are recovered from the regulated industry.

What is the test for determining cost awards?

The purpose of providing funding is to bring value-added information to the Commission. Value-added information refers to new, distinctive and relevant information that contributes to a better understanding of the anticipated effects of a project.⁴⁴

Other Information

The CNSC determines how much funding it will make available for project-specific PFP funding opportunities on a case-by-case basis. The amount of funding depends on several factors, including:

- degree of public interest
- significance of a project's potential impacts
- project complexity, size and location
- number of Indigenous groups potentially affected
- diversity of issues associated with the proposed project
- previously established PFP funding levels for similar projects
- type, format and location of the Commission proceeding
- total amount of PFP financial resources currently available

⁴³ Participant Funding Program Guide, p. 7

⁴⁴ Participant Funding Program Guide, p. 2

Ontario Energy Board

The OEB regulates Ontario's energy sector and has regulated the natural gas sector since 1960 and the electricity sector since 1999.

Intervenor status and cost eligibility are decided by the Registrar, whose authority comes from Section 6 of the *Ontario Energy Board Act, 1998* (OEB Act), under which the Registrar, an employee of the OEB, has been delegated the powers and duties of the OEB to do so.

Governing Rules

OEB Act; Rules of Practice and Procedure, (Rules) ⁴⁵ ; Practice Direction on Cost Awards (Practice Direction) ⁴⁶

How do parties request to be an intervenor?

Section 22.01 of the Rules requires a person to apply for intervenor status by filing and serving a letter of intervention by the date provided in the notice of the proceeding. Section 22.03 outlines that every letter of intervention shall contain the following information:

- (a) a description of the intervenor, its membership, if any, the interest of the intervenor in the proceeding and the grounds for the intervention
- (b) in the case of a frequent intervenor, an attached document describing the intervenor, its mandate and objectives, membership, if any, the constituency represented, the types of programs or activities carried out, and the identity of their authorized representative in OEB proceedings, unless such a document was otherwise filed within the previous 12-month period
- (c) subject to Rule 22.04, a concise statement of the nature and scope of the intervenor's intended participation
- (d) a request for the written evidence, if it is desired
- (e) an indication as to whether the intervenor intends to seek an award of costs
- (f) if applicable, the intervenor's intention to participate in the hearing using the French language; and
- (g) the full name, address, telephone number, and email address, of no more than two representatives of the intervenor, including counsel, for the purposes of service and delivery of documents in the proceeding.

Is there a Consumer Advocate?

No

How do parties object to a request for intervenor status?

A party may object to a person applying for intervenor status by filing and serving written submissions.

⁴⁵ Rules of Practice and Procedure, July 30, 2021

⁴⁶ Practice Direction on Cost Awards, April 24, 2014

What is the test for being granted intervenor status and where is it set out?

Section 22.02 of the Rules states that the person applying for intervenor status must satisfy the OEB that they have a substantial interest and intends to participate actively and responsibly in the proceeding.

Is there a requirement for intervenors to work together?

Intervenors are encouraged to work together and as noted below, the degree of cooperation may affect cost awards.

If denied for intervention status, how does party request a review?

The party denied intervenor status may file an appeal of the Registrar's Decision on intervenor status to the OEB under Section 7(1) of the OEB Act.

Example of an intervenor being denied.

The OEB's Registrar denied intervenor status to a public policy think tank which requested to participate in rate application proceeding. Upon appeal to the OEB, the decision was upheld by the panel of Commissioners, finding that the organization did not have a substantial interest in the proceeding.⁴⁷

In addition, the OEB denied intervenor status and cost eligibility to four policy or research-based representatives that had requested such status in an application for electricity rates. Reasons for denying intervenor status included the OEB being unclear on how the requestor's members would be directly and materially affected by the outcome of the hearing and substantial interest not being established.⁴⁸ Two of the denied intervenors filed letters providing additional information to support a substantial interest in the proceeding. These letters were treated as Motions to Review and as a result were granted intervenor status.

Who is not eligible for cost awards?

Section 3.03 of the Practice Direction outlines who is eligible to apply for cost awards and Section 3.05 states who is not eligible for cost awards

Who pays for costs of intervention?

The OEB may order by whom and to whom any costs are to be paid. Normally, applicants are ordered to pay intervenor costs in applications.

What is the test for determining cost awards?

Section 5.01 of the Practice Direction notes that the OEB may consider, amongst other things, whether the party has demonstrated through its participation and documented in its cost claim that it has:

- (a) participated responsibly in the process
- (b) contributed to a better understanding by the Board of one or more of the issues in the process
- (c) complied with the Board's orders, rules, codes, guidelines, filing requirements and section 3.03.1 of this Practice Direction with respect to frequent intervenors, and any directions of the Board

⁴⁷ EB-2018-0165 Decision on Appeal, December 14, 2018

⁴⁸ EB-2017-0049. PO#1, August 31, 2017

- (d) made reasonable efforts to combine its intervention with that of one or more similarly interested parties, and to co-operate with all other parties
- (e) made reasonable efforts to ensure that its participation in the process, including its evidence, interrogatories and cross-examination, was not unduly repetitive and was focused on relevant and material issues
- (f) engaged in any conduct that tended to lengthen the process unnecessarily; or
- (g) engaged in any conduct which the Board considers inappropriate or irresponsible.

Other information

Section 3.03.1 of the Practice Direction requires parties that frequently apply for intervenor status and cost award eligibility to file, at least annually, the following information about the party:

- (a) its mandate and objectives
- (b) its membership and the constituency it represents
- (c) the types of programs or activities that the party carries out
- (d) the identity of the individual(s) that represent the party in Board proceedings
- (e) any other information that could be relevant to the Board's consideration of the party's application for intervenor status and cost award eligibility; and
- (f) updates to any information previously filed

CANADIAN REGULATORS WITHOUT FORMAL INTERVENOR FUNDING PROGRAMS

Nova Scotia Utility and Review Board (NSUARB)

The NSUARB regulates electric, water (including wastewater and stormwater) and natural gas utilities, sets gasoline and diesel prices and the maximum cost of borrowing for payday loans, and approves auto insurance rates and the tolls for the Halifax-Dartmouth bridges. The Board also regulates public passenger motor carriers and railways.

Governing Rules

Board Regulatory Rules made under Section 12 of the *Utility and Review Board Act*. Cost Rules made under Sections 12 and 28.

How do parties request to be an intervenor?

Parties make a written request setting out the facts and reasons why the person has an interest in the application; and states the issues that the person intends to address at the hearing. The general position of the Board is that a “paying customer” may be an intervenor.

Is there a Consumer Advocate?

Yes, a Consumer Advocate for residential consumers and/or a Small Business Advocate can be appointed by either the Government of Nova Scotia or the Board and represent the persons who otherwise would most likely be represented by consumer or customer groups. The Consumer Advocate and Small Business Advocate cannot be the same person.⁴⁹

How do parties object to request for intervenor status?

A party may, within 15 days after the date of service of a written intervention, serve an objection to the intervention on the person who has filed the intervention and shall file with the Board and serve on all other parties a copy of the objection.⁵⁰

What is the test for being granted intervenor status and where is it set out?

The Board may accept or disallow an intervention⁵¹, however the Rules do not state on what grounds other than not filing in accordance with the schedule set by the Board. The Board may take guidance by applying the NSUARB Rules which refer to interested parties who “have a real and substantial interest” to participate.⁵² While intervenor status may be granted, there may be a restriction on access to confidential information for only counsel for the intervenor.

⁴⁹ Public Utilities Act, s. 93

⁵⁰ Board Regulatory Rules, Rule 11(4)

⁵¹ *Ibid*, Rule 11(2)

⁵² Utility and Review Board Rules, Rule 5

Is there a requirement for intervenors to work together?

No

If denied for intervention status, how does a party request a review?

The Board's Rules do not provide for review. A party would have to appeal the decision to the Court of Appeal where an appeal lies only on a question of law or jurisdiction.⁵³

Example of an intervenor being denied

We are not aware of any recent examples of an intervenor being denied in a regulatory proceeding.

Who is not eligible for cost awards?

Individuals who might be permitted to intervene, or a party, that does not come within the Cost Rules provision. The general reason for denial of costs is where the intervenor has provided limited assistance to the Board. For examples where costs have been limited, see decisions regarding the Lower Power Rates Alliance⁵⁴ and Dalhousie Legal Aid⁵⁵. Examples where costs were denied include the Ecology Action Centre not technically being a customer group⁵⁶ and to the Canadian Propane Association which represents the interests of competitors to the applicant.⁵⁷

Who pays for costs of intervention?

Costs of intervention, when approved as below, are recovered from the applicant.⁵⁸

What is the test for determining cost awards?

This is set out in the Cost Rules as noted above. The costs must be reasonable, and generally do not include the time of individuals who are employees of the public interest intervenors.

Other Information

The Board does not have an intervenor funding program.

The Cost Rules provide that the Board "has no power to order intervenor funding or security for costs" however "may consider awarding costs against a utility to non-profit, public interest intervenors with limited financial resources who:

- have a substantial interest in the proceeding
- will be affected by the proceeding
- participate in the hearing in a responsible way
- contribute to a better understanding of the issues by the Board⁵⁹

⁵³ UARB Act, s. 30(1)

⁵⁴ 2013 NSUARB 194

⁵⁵ 2005 NSUARB 65

⁵⁶ 2013 NSUARB 154

⁵⁷ 2016 NSUARB 161

⁵⁸ Consumer Advocate, per s. 91(4) of the Public Utilities Act; Small Business Advocate, per s.92(5) of the PUA.

⁵⁹ Cost Rules

New Brunswick Energy & Utilities Board

The New Brunswick Energy and Utilities Board (Board) regulates aspects of electricity and natural gas utilities as well as motor carriers. In addition, the Board sets weekly retail prices for petroleum products sold within the province.

Governing Rules

Rules of Procedure, effective November 1, 2019

How do parties request to be an intervenor?

Intervenor requests are filed with the Board.⁶⁰ An Intervenor Request shall contain the following:

- a description of the proposed Intervenor
- the nature of the proposed Intervenor's interest in the proceeding and why that interest should justify the granting of Intervenor status
- the nature and scope of the intended participation in the proceeding and the issues such participation is intended to address
- the name, address, telephone number and electronic mail address of the proposed Intervenor or the Intervenor's authorized representative
- the name, address, telephone number and electronic mail address of the proposed Intervenor's legal counsel, if any; and
- the official language in which the proposed Intervenor intends to proceed

Is there a Consumer Advocate?

There is no Consumer Advocate, however, the Office of Public Energy Intervenor is an automatic party to hearings before the Board as outlined in an *Act Respecting a Public Intervenor for the Energy Sector*. The Public Intervenor advocates on behalf of the public interest, not a particular class or group.

How do parties object to a request for intervenor status?

A party or proposed intervenor may, no later than one day prior to the pre-hearing conference set by the Board, serve an objection to an Intervenor Request, with reasons.⁶¹

The Board may order a Pre-Hearing Conference to be held to allow parties and Board staff to make representations about the procedure to be followed and any other relevant matters. Such matters include but are not limited to considering any intervenor request that has not already been disposed of and deciding on any other matter that may aid in the simplification or the just and most expedient disposition of the proceeding.

⁶⁰ Rule 3.2.1

⁶¹ Rule 3.2.5

What is the test for being granted intervenor status and where is it set out?

A person filing an Intervenor Request must have a substantial interest in the proceeding and intend to participate actively and responsibly.^{62, 63}

Is there a requirement for intervenors to work together?

There is no requirement for intervenors to work together.

If denied for intervention status, how does a party request a review?

Pursuant to section 43 of the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18 (Act) and Rule 8.1 of the Rules of Procedure, the Board may review, rescind or vary any order made by it.

Subsection 52(1) of the Act identifies that a person aggrieved by an order or decision of the Board may make an application for judicial review to the New Brunswick Court of Appeal within 30 days.

Example of an intervenor being denied

The Board has disqualified an intervenor from a proceeding due to past behavior, finding that he ‘will not participate in this matter in a respectful and responsible manner’.⁶⁴

Other information

There is no provision for intervenor funding. The Board considered a motion for intervenor funding in Matter 357.⁶⁵ The Board found that it did not have jurisdiction to grant intervenor funding and denied the motion.

Prince Edward Island Regulatory and Appeals Commission

The PEI Regulatory and Appeals Commission regulates utilities except sewerage and water utilities owned, operated, managed or controlled in certain cities, decides appeals related to land use, rentals and various acts.

Governing Rules

Rules of Practice & Procedure for Hearings, August 10, 2020

How do parties request to be an intervenor?

Interested individuals or organizations may either apply as an Added Party Intervenor (vested with the rights of a party, e.g., can call witnesses) or as a Friend of the Commission Intervenor.

⁶² Rule 3.2.2

⁶³ Rules 3.2.1 and 3.2.2 do not apply to any person deemed by legislation to be a party to a proceeding

⁶⁴ New Brunswick Energy and Utilities Board, Matter 375, Transcript of Pre-Conference Hearing, October 31, 2017, p.85

⁶⁵ Matter 357: <https://filemaker.nbeub.ca/fmi/webd/NBEUB%20ToolKit13>

Is there a Consumer Advocate?

No

How do parties object to a request for intervenor status?

Any party who wishes to reply to the application for intervention shall serve and file a written submission with the Commission.⁶⁶

What is the test for being granted intervenor status and where is it set out?

In determining whether to grant status as an Added Party Intervenor, the Panel may consider any factor the Panel deems relevant in the circumstances, including, but not limited to, the following:

- the nature of the applicant's interest in the proceeding, including whether the applicant has a distinct and substantial interest in the proceeding
- the nature and scope of the applicant's intended participation, including whether the applicant intends to participate actively in the proceeding
- the extent to which the proposed intervention will add to the costs and complexity of the proceeding
- whether the proposed submissions will assist the Commission in resolving the issues raised in the proceeding⁶⁷

Other information

There is no provision for intervenor funding.

Newfoundland and Labrador Board of Commissioners of Public Utilities (Board)

The Board is responsible for the regulation and oversight of the electric utilities in the province, regulation of automobile insurance rates, setting maximum prices for petroleum products, as well as limited responsibilities in the areas of motor carrier operations and expropriations.

Governing Rules

Section 90 of the *Public Utilities Act*, Board of Commissioners of Public Utilities Regulations, 1996

How do parties request to be an intervenor?

Parties submit an Intervenor Submission Form (See Appendix E for example)

⁶⁶ Rules of Practice & Procedure, August 10, 2020, Section 18

⁶⁷ Rules of Practice & Procedure, August 10, 2020, Section 20

Is there a Consumer Advocate?

Yes, a Consumer Advocate may be appointed by the Lieutenant Governor in Council to represent the interests of domestic and general service customers in relation to specific hearings and applications before the Board.

How do parties object to intervenor status?

The pre-hearing conference is used to, among other things, identify intervenors, set the schedule and guidelines for the proceeding, and address other matters that may be raised. This is where objections could be raised.

What is the test for being granted intervenor status and where is it set out?

The intervenor submission form requires the following information: list the topics/issues you are interested in, what facts or documentation will you rely on to support your intervention, how is your interest unique and not represented by others?

Is there a requirement for intervenors to work together?

There is no requirement for intervenors to work together although the Board would encourage intervenors to do so where there may be a commonality of interests or concerns to be addressed.

If denied for intervenor status, how does a party request a review?

In denying a request for intervenor status the Board would provide reasons for its decision. The Board would accept a request for review of the decision upon the provision of such a request along with any supplemental information that could be provided to support the request.

Example of an intervenor being denied

The Board has denied requests for intervention or standing in past proceedings where it was determined that the intervenor could not demonstrate a direct interest in the matter or where the issues were outside the scope of the matter being heard.

Who is not eligible for cost awards?

The Board does not prescribe ineligibility for cost awards. The panel hearing a matter makes its determination on eligibility for cost awards and the amount of such award at the end of a proceeding based on its assessment of the contribution of the intervenor to the panel's understanding of the issues before it in making its decision.

Who pays for costs of intervention?

The applicant utility would pay for the costs of intervenors in an amount as ordered by the Board.

What is the test for determining cost awards?

In determining whether a party is eligible for an award of costs the Board may consider whether the claimant has a substantial and/or unique interest in the proceeding which may not be represented by the Consumer Advocate or other party, may be directly and sufficiently affected by the outcomes of the proceeding and contributed to a better understanding of the issues to be decided by the Board, i.e., has relevant specialized experience, information or expertise.⁶⁸

⁶⁸ Comparative Analysis Report for CAMPUT on Intervenor Funding Programs, October 2018, p. 50

Régie de l'énergie

The Régie de l'énergie regulates electricity, natural gas and petroleum products, as well as certain petroleum projects.

Governing Rules

Rules of Procedure of the Régie de l'énergie

How do parties request to be an intervenor?

File a request which must include:

- the nature of the interested person's interest
- the grounds for the intervention
- the issues the interested person intends to address, and a concise version of the conclusions sought, or recommendations proposed ⁶⁹

Is there a Consumer Advocate?

No

How do parties object to a request for intervenor status?

The applicant can file comments or an objection to an application to be an intervenor.⁷⁰

What is the test for being granted intervenor status and where is it set out?

The application for intervenor status must specify the grounds for the intervention, the issues the interested person intends to address and a concise version of the conclusions sought, or recommendations proposed and a proposed budget.

Is there a requirement for intervenors to work together?

There is no requirement, but the Régie has invited intervenors to work together on many occasions, in its decisions or in the event of meetings with parties.

If denied for intervenor status, how does a party request a review?

This situation has never occurred, but all requests for a review are subject to clause 37 of the *Act respecting the Régie de l'énergie*, <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/R-6.01> (chapter R-6.01):

37. The Régie, on its own initiative or on application, may revise or revoke any decision it has made

- (1) where a new fact is discovered which, had it been known in time, could have justified a different decision;*
- (2) where an interested person was unable, for sufficient cause, to present observations; or*
- (3) where a substantive or procedural defect is likely to invalidate the decision.*

⁶⁹ Rules of Procedure, #16

⁷⁰ *Ibid*, #17

Before revising or revoking a decision, the Régie must give the persons concerned an opportunity to present observations.

In the case set out in subparagraph 3 of the first paragraph, the decision may not be revised or revoked by the commissioners having made the decision.

Example of an intervenor being denied

An example of an intervenor being denied can be found on paragraph 11 of decision D 2020-018. In such cases, the Régie makes sure to explain its decision, in the fewest words possible.

Who is not eligible for cost awards?

Usually, intervenors that represent their own interest. This sometimes happens, especially in matters regarding petroleum products or reliability standards and compliance matters.

Who pays for costs of intervention?

The applicant utility can be ordered to pay the costs of intervenors. The Régie de l'énergie may also directly pay these costs.

What is the test for determining cost awards?

There is no intervenor funding program, however, Commissioners have the power to order the applicant to pay the costs incurred by any intervenor whose participation is useful to the Board.

Other information

When the Régie de l'énergie grants intervenor status it can determine the framework for the intervention based on the party's interest, the nature and importance of the issues addressed, the issues the Régie de l'énergie finds relevant and the public interest.⁷¹

⁷¹ Rules of Procedure, #19

US REGULATORS

Federal Energy Regulatory Commission (FERC)

FERC regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to build liquefied natural gas terminals and interstate natural gas pipelines as well as licensing hydropower projects.

Governing Rules

Commission Regulations 18 CFR 385.211 and 385.214 Intervention (Rule 214), file in accordance with Rules 211 and 214.

How do parties request to be an intervenor?

All motions to intervene should be submitted to the Commission and must state, to the extent known, the position taken by the movant and the basis in fact and law for that position, the movant's interest in sufficient factual detail to demonstrate that: the movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action and has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a: Consumer, Customer, Competitor or Security holder of a party or the movant's participation is in the public interest.

Is there a Consumer Advocate?

There is currently no consumer advocate for the FERC process, parties do not routinely include representatives of the public unless one or more state commissions or state consumer advocates intervene. The *Public Utility Regulatory Policies Act* (PURPA) provided for an Office of Public Participation for FERC when enacted in 1978, but the position has never been funded or activated. On June 24, 2021, FERC issued a report that indicates it intends to establish an Office of Public Participation, an office intended to make it easier for smaller organizations and individuals to participate in FERC proceedings by establishing an intervenor funding program.

What is the test for being granted intervenor status and where is it set out?

Timely interventions are automatically accepted if no one protests their filing within 15 days of being filed.

New York Public Service Commission

The New York Public Service Commission regulates electric, gas, steam, telecommunications, and water services and stimulates effective competitive markets for clean, renewable, and distributed energy resources.

Governing Rules

Rules of Procedure, NYCRR TITLE 16, Chapter 1, Part 4.3

How do parties request to be an intervenor?

Parties use an on-line form to seek permission to intervene from the Administrative Law Judge or Secretary.

Is there a Consumer Advocate?

Yes, there is a Special Counsel for Ratepayer Protection that represents the interests of residential and commercial customers of New York's regulated electric, gas, water, and telecom companies, with the ability to participate as a party in Public Service Commission proceedings, conduct hearings and investigations, undertake discovery to compel documents and testimony, and otherwise marshal the resources of the Department of Public Service to safeguard the interests of ratepayers and hold accountable those utilities and telecoms which fail to meet their contractual and regulatory obligations to their customers. The Division of Consumer Protection's Utility Intervention Unit has automatic party status in any proceeding.

How do parties object to a request for intervenor status?

Parties can object at the Procedural Conference.

What is the test for being granted intervenor status and where is it set out?

The standard for allowing intervention is whether your participation is likely to contribute to the development of a complete record or is otherwise fair and in the public interest; whether other parties are unfairly prejudiced is also considered.⁷²

If denied for intervention status, how does a party request a review?

Parties can file an interlocutory motion.

Who pays for costs of intervention?

In states where there is no state-funded consumer advocate, and for larger consumer owned utilities, the federal PURPA Section 122 provides a framework for intervenor compensation to parties that significantly affect regulators' implementation of the PURPA ratemaking standards.

What is the test for determining cost awards?

If provided for under PURPA Section 122 the party must show that but for the ability to receive such award, participation or intervention in such proceeding may be a significant financial hardship for such consumer, and persons with the same or similar interests have a common legal representative in the proceeding as a condition to receiving compensation. If provided for by the regulator, parties must show that:

- they have, or represent, an interest, which would not otherwise be adequately represented in the proceeding
- representation of which is necessary for a fair determination in the proceeding
- they are, or represent an interest which is, unable to effectively participate or intervene in the proceeding because such persons cannot afford to pay reasonable attorneys' fees, expert witness fees, and other reasonable costs of preparing for, and participating or intervening in, such proceeding⁷³

⁷² Rule 16 NYCRR 4.3

⁷³ PURPA Section 122

California Public Utilities Commission (CPUC)

The CPUC regulates privately owned communications, electric, natural gas and water companies, as well as railroad safety, rail transit, passenger-for-hire transportation carriers, and Transportation Network Companies such as Uber and Lyft.

Governing Rules

Public Utilities Code, Sections 1701, 1801-1812, 11440, Rules of Practice and Procedure, California Code of Regulations Title 20, Division 1, Chapter 1, Article 17

How do parties request to be an intervenor?

Parties submit a motion for party status in a proceeding.

Is there a Consumer Advocate?

Yes, the Office of Ratepayer Advocates (ORA) or Public Advocates Office is the independent consumer advocate within the California Public Utilities Commission, ORA's mission is to "obtain the lowest possible rate for service consistent with reliable and safe service levels."⁷⁴ Other intervenors are permitted.

How do parties object to a request for intervenor status?

The CPUC typically holds a prehearing conference early in a proceeding to determine the parties, positions of the parties, issues, and other procedural matters.

What is the test for being granted intervenor status and where is it set out?

A person seeking party status shall disclose their interest in the proceeding and state the factual and legal contentions that the person intends to make and show that the contentions will be reasonably pertinent to the issues already presented. The assigned Administrative Law Judge may, where circumstances warrant, deny party status or limit the degree to which a party may participate in the proceeding.⁷⁵

Yes, if the proceeding involves multiple intervenors, the request for compensation shall include a showing that the participation materially supplemented, complemented, or contributed to the presentation of any other party with similar interests, or that the participation did not overlap the presentation of other intervenors.

Who pays for costs of intervention?

Awards are paid by public utilities from monies collected from utility ratepayers.

What is the test for determining cost awards?

To receive funding, the intervenor must be a customer or representative of and demonstrate financial hardship. They are required to file a Notice of Intention to seek cost awards, in which they are required to outline the issues they intend to focus on and their position on these issues. This explanation provides the Commission with the means to evaluate whether the party will be representing interests that would otherwise be underrepresented in the proceeding and helps all parties avoid engaging in duplicative participation. If their participation might overlap with one or more parties, they are required to state how they intend to avoid duplication of effort with other parties. The CPUC will reduce intervenor compensation awards for duplicative participation.

⁷⁴ Public Utilities Code Section 309.5

⁷⁵ Rule 1.4

INTERNATIONAL REGULATORS

The Australian Energy Regulator (AER) and the energy regulator in the United Kingdom (OFGEM) are non-adjudicative regulators and as such utilize a different model to ensure that energy consumers' priorities and stated preferences are incorporated into the revenue proposals of utilities. While not directly applicable to the question of 'substantial interest' they do provide an alternative approach.

Australian Energy Regulator

The AER regulates wholesale and retail energy markets, and energy networks, under national energy legislation and rules, mostly relate to energy markets in eastern and southern Australia.

The Consumer Challenge Panel (CCP) was established as part of the Better Regulation reform program in 2014. The role of the CCP is to provide input and challenge the AER on key consumer issues during a network determination, to improve the AER's decisions. The CCP is not a decision-making forum, nor is its role to negotiate or advocate on behalf of consumers or industry. Its role is to act in an advisory capacity to help inform the AER's decisions with regards to consumers. The AER is not obliged to act on the views expressed by CCP members but will give due weight and consideration to the advice provided. The AER will provide a clear rationale for their decision and will provide feedback to CCP members as to how their views have been considered and addressed.

In March 2018, the AER launched a new initiative New Reg: Towards a Consumer-Centric Energy Network Regulation, in conjunction with Energy Networks Australia and Energy Consumers Australia. The process involves the establishment of a Consumer Forum, which represents the perspectives of all the network's consumers, to negotiate with the network business to reach agreement before the proposal is filed with the regulator. The objective is not to just consult with consumers but come to an agreement with them.⁷⁶

Ofgem

Ofgem stands for the Office of Gas and Electricity Markets. It is responsible for regulating and overseeing the companies that operate the UK's gas and electricity networks.

For RIIO-ED2, distributors establish Customer Engagement Groups (CEG) and Ofgem sets up a Challenge Group for each application. All the Groups are independent, operating at an arm's length from both the network companies and Ofgem and are capable of providing rigorous challenge to companies. The CEG is to identify key concerns of all stakeholders. In addition, Open Hearings are to be held to hear from other interested stakeholders.

⁷⁶ New Reg: Towards Consumer-Centric Energy Network Regulation, Approach Paper, March 2018

REFERENCES

Websites:

- Alberta Utilities Commission | www.auc.ab.ca
- Australian Energy Regulator | www.aer.gov.au
- British Columbia Utilities Commission | www.bcuc.com
- California Public Utilities Commission | www.cpuc.ca.gov
- Canada Energy Regulator | www.cer-rec.gc.ca
- Canadian Nuclear Safety Commission | www.cnsccsn.gc.ca
- Federal Energy Regulatory Commission | www.ferc.gov
- Manitoba Public Interest Law Centre | www.legalaid.mb.ca
- Manitoba Public Utilities Board | www.pubmanitoba.ca
- New Brunswick Energy and Utilities Board | www.nbeub.ca
- Newfoundland and Labrador Board of Commissioners of Public Utilities | www.pub.nf.ca
- New York Public Service Commission | www.dps.ny.gov
- Northwest Territories Public Utilities Board | www.nwtpublicutilitiesboard.ca
- Nova Scotia Utility and Review Board | www.nsuarb.novascotia.ca
- Ofgem | www.ofgem.gov.uk
- Prince Edward Island Regulatory and Appeals Commission | www.irac.pe.ca
- Saskatchewan Rate Review Panel | www.saskratereview.ca
- Comparative Analysis Report for CAMPUT on Intervenor Funding Programs, October 2018
- Electricity Regulation in the US: A Guide, Regulatory Assistance Project
<https://www.raponline.org/wp-content/uploads/2016/05/rap-lazar-electricityregulationintheus-guide-2011-03.pdf>
- Energy Regulation Quarterly: Consumer Advocacy in Ontario's Energy Sector: A New Model, Authors: Adam Fremeth and Guy Holburn, September 2016, Volume 4, issue 3
- The National Regulatory Research Institute, The Role of Utility Consumer Advocates in a Restructured Regulatory Environment, September 2004
- Ontario Energy Board, Review of Framework Governing the Participations of Intervenors in Board Proceedings, EB-2013-0301, submissions
- Vermont Public Service Department, An Evaluation of Ratepayer Advocate Structures Pursuant to Act 56, Section 21b - A Report to the Vermont House Committee on Commerce and Economic Development and the Senate Committee on Finance, February 22, 2016
- FERC just established an Office of Public Participation. Why did it take 40 years? Utility Drive, June 30, 2021

APPENDIX A

Regulator	Consumer Advocate	Test for Intervenor Status	Requirement for intervenors to work together	Cost Awards
OEB	No	Have a substantial interest and intends to participate actively and responsibility in the proceeding	OEB considers whether cost eligible intervenors make reasonable efforts to coordinate their participation to avoid duplication	Represents the direct interests of ratepayers or an interest or policy perspective relevant to OEB's mandate and the proceeding
BCUB	Residential Consumer Intervenor Association	Demonstrate that they are directly or sufficiently affected by decision or have information/expertise relevant to the proceeding	Expected to take reasonable efforts to avoid duplication. Encourages intervenors to coordinate through cost awards	Have a substantial interest in a substantial issue. Usually, only rate payer groups
AUC	Office of the Utilities Consumer Advocate	Demonstrate the existence of a right or rights that may be directly and adversely affected by the Commission's decision	Encourages parties to band together through cost awards	May be awarded to intervenor who has a substantial interest and no other means
CER	No	No standing test	No specific requirement	Establishes funding maximums by recipient type prior to announcing the funding opportunity
NSUARB	Consumer Advocate for residential and/or a Small Business Advocate can be appointed	Parties who have a real and substantial interest	No specific requirement	Can be denied where the intervenor has provided limited assistance to the Board
CNSC	No	A person who has an interest in the matter being heard, or a person who has expertise in the matter or information that may be useful to the Commission in coming to a decision	No specific requirement. Individuals and organizations seeking funding for similar activities are encouraged to work together on their proposals when feasible	The purpose of providing funding is to bring new, distinctive and relevant information that contributes to a better understanding of the anticipated effects of a project information to the Commission. The CNSC determines how much funding it will make available for project-specific PFP funding opportunities on a case-by-case basis
NWTPUB	No	Board may meet with Party to understand the purpose of the intervention and the extent of participation	May direct intervenors with similar interest to present a joint intervention	Make a significant contribution that was relevant to the proceeding; made a reasonable effort to secure alternative funding; represent interests of a substantial number of rate payers

Regulator	Consumer Advocate	Test for Intervenor Status	Requirement for intervenors to work together	Cost Awards
New Brunswick Energy & Utilities Board	No but the Office of Public Energy Intervenor is an automatic party to hearings; advocates on behalf of the public interest	Have substantial interest in the proceeding and intent to participate actively and responsibly	No specific requirement	There is no provision for intervenor funding.
Régie de l'énergie	No	Application for intervenor status must specify the grounds for the intervention, the issues they intent to address and a concise version of the conclusions sought, or recommendations proposed and a proposed budget	There is no requirement, but the Régie has invited intervenors to work together on many occasions, in its decisions or in the event of meetings with parties	There is no intervenor funding program, however, Commissioners have the power to order the applicant to pay the costs incurred by any intervenor whose participation is useful to the Board
Manitoba (PUB)	No, although the PILC can receive funding from Manitoba Legal Aid to intervene in rate cases	The Board will review the purpose and extent of the requested intervention and the any supporting information supporting intervention	Intervenors expected to use professional services in a cost-effective manner and to make best efforts to avoid duplication. Cost awards may be adjusted where there is duplication. In some cases, the Board may recommend or order intervenors to make joint interventions	Cost awards based on significant contribution that is relevant to the proceeding and contributed to a better understanding, participated in a responsible manner and represented a substantial interest in the outcome of the proceeding
Newfoundland and Labrador Board of Commissioners of Public Utilities (Board)	Yes, may be appointed by the LGIC	Provide topics/issues interested in, what facts or documentation will be relied on to support intervention, how is your interest unique and not represented by others	No requirement, intervenors encouraged to work together where there may be commonality of interests	Board may consider whether the claimant has a substantial and/or unique interest not represented by other party, directly affected by the outcomes of the proceeding and contributed to a better understanding of the issues
Prince Edward Island Regulatory and Appeals Commission	No	The nature of the applicant's interest in the proceeding, including whether the applicant has a distinct and substantial interest in the proceeding; the nature and scope of the applicant's intended participation; the extent to which the proposed intervention will add to the costs and complexity of the proceeding and whether the proposed submissions will assist the Commission in resolving the issues raised in the proceeding	N/A	No provision for intervenor funding

APPENDIX B

Sample of Cost Award Tariffs

Regulator	LEGAL						CONSULTANTS					
\$/hour	>20 years	15-19	10-14	5-9	0-5	Articling Student	>20 years	15-19	10-14	5-9	0-5	Specialist/ Expert Witness
OEB ¹	330	290	290	260	170	100	330	290	290	260	170	
Manitoba PUB ²	285	Up to 240	Up to 190	Up to 140	100		ACCOUNTANTS					
							240	Up to 205	Up to 170	Up to 135	100	
							ENGINEERING					
							200	Up to 175	Up to 150	Up to 125	100	
	>20 years	>12 years	8-12	5-7	1-4	Articling Student	>20 years	>12 years	8-12	5-7	1-4	Specialist/ Expert Witness
BCUC ³	350	350	319	281	238	106	231	231	231	163	119	269
AUC ⁴	350	350	320	280	240	140	270	270	230	160	120	

¹ Appendix A to Practice Direction on Cost Awards, April 24th, 2014

² Appendix A to Intervenor Costs Policy for General Rate Applications, September 28, 2018

³ PACA Guidelines Amendment Appendix A to Order G-97-17, June 15, 2017

⁴ Rule 022 Rules on Costs in Utility Rate Proceedings, May 2, 2016, based on daily rate/8 hours

APPENDIX C

Summary of Comments Received in the OEB's: Review of Framework Governing the Participants of Intervenor Proceedings (EB-2013-0301)

Utilities

Most utilities acknowledged that intervenors play an important role in proceedings, providing a diverse perspective.

Intervenors should provide details of their specific interest in a proceeding and a detailed work plan and budget when applying for intervenor status. Some parties suggested that the OEB should force some intervenors to combine interventions.

Substantial Interest - the proposed intervenor should be expected to represent a constituency directly impacted by the application, i.e., the request should explain who the constituency is and what the potential impact on that group might be. The potential intervenor should be able to show there is an effective means to obtain instruction and direction from representatives of that constituency and should represent a group not already represented by another.

Intervenors

Supported the concept of a lead intervenor on an issue but noted that there is value in having parties with diverse perspectives doing their analysis and coming to a common position.

Indicated that there is already a high level of cooperation and collaboration among intervenors who have a common perspective on one or more issues in a proceeding.

Until the discovery process is complete it is usually not possible to identify all the issues in an application, thus making it difficult to note specific issues of interest or prepare a work plan and budget.

The budget envelope approach to cost awards is impractical due to the complexity of most proceedings and the inability to predict issues and the level of effort required by intervenors before a proceeding commences.

Intervenors themselves should decide whether to combine interventions, instead of being mandated to do so.

Under the current rules, the OEB has wide discretion both in admitting parties to any specific proceeding, and in making cost awards. Further rules would limit that discretion.

APPENDIX D

Number of Gas and Electricity Utilities Regulated

	Electricity Distributors Transmitters Generators	Gas Distributors (includes propane)	Other
Ontario Energy Board	70	2	Independent Electricity System Operator, Smart Metering Entity
Alberta Utilities Commission	15	3	Water utilities, companies who propose to construct or rebuild electric generation, transmission or distribution facilities must apply for siting approval and an adjudicative function for issues arising in electric and natural gas markets
British Columbia Utilities Commission	8	9	12 Thermal Energy Systems and 1 Electricity, Propane, Stream A and B Thermal Energy System, the Insurance Corporation of BC's compulsory automobile insurance rates, intra-provincial pipeline rates, and the reliability of BC's electrical transmission grid, also the Administrator of BC's Fuel Price Transparency Act.
Manitoba Public Utilities Board	1	2	Compulsory driver and Basic vehicle insurance provided by Manitoba Public Insurance and rates charged by water and wastewater utilities outside the City of Winnipeg. The PUB regulates private natural gas brokers and monitors the construction and operation of gas pipelines that are subject to provincial jurisdiction.
Régie de l'énergie	12	2	Also regulates petroleum products, as well as certain petroleum projects
Nova Scotia Utility and Review Board	7	3	water (including wastewater and stormwater), sets gasoline and diesel prices and the maximum cost of borrowing for payday loans, and approves auto insurance rates and the tolls for the Halifax-Dartmouth bridges. The Board also regulates public passenger motor carriers and railways.
Newfoundland and Labrador Board of Commissioners of Public Utilities	2	0	Also ensures fairness in marketing of petroleum products and supervises rates charged by automobile insurers.
New Brunswick Energy and Utilities Board	1	1	Also motor carriers and sets weekly retail prices for petroleum products sold within the province
Prince Edward Island Regulatory and Appeals Commission	2	N/A	Also, municipal water and sewer, petroleum pricing and decides appeals related to land use, rentals and various acts
Northwest Territories Public Utilities Board	3	3	1 district heating
Canada Energy Regulator	N/A	N/A	Regulates pipelines and power lines for their complete life cycle (construction, operation and retirement), energy development and trade.
Canadian Nuclear Safety Commission	N/A	N/A	Regulates the development, production and use of nuclear energy, the production, possession, use and transport of nuclear substances, and the production, possession and use of prescribed equipment and prescribed information.

APPENDIX E

Examples of an Intervenor Request Form

AUC's Statement of Intent to Participate

https://www.auc.ab.ca/regulatory_documents/Reference/RP2b-RatesSIPForm.pdf#search=Statement%20of%20intent%20to%20participate

CER Application to Participate

https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90465/92835/155829/3773831/3890507/3901808/3930822/3912536/C05257-1_Application_To_Participate_-_A7E2I8.pdf?nodeid=3912537&vernum=-2

Board of Commissioners of Public Utilities Newfoundland and Labrador Intervenor Submission Form

<http://www.pub.nl.ca/download/IntervenorSubmissionForm.pdf>



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