

Executive Summary: Ensuring Proper Representation for Consumers: Model Rules for Participation Costs Awarded by Economic Regulation Authorities

Executive summary

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Certain economic sectors, such as public utilities (electricity, gas, telecommunications, water, automobile insurance, etc.), require a stricter regulatory framework than others. A common way to regulate those sectors, where monopolies are the rule rather than the exception, is to have them supervised by economic regulation boards, such as, in Canada, the CRTC, the Régie de l'énergie du Québec or the Ontario Energy Board, which monitor and regulate the delivery of services deemed essential.

Regulated companies and industrial groups are generally well represented on those boards and have the necessary resources, expertise and financial means for ensuring effective representations before those authorities on which their essential activities depend. Consumer rights advocacy groups and public interest groups in general, for their part, do not have access to adequate means for presenting to regulators a viewpoint differing from that of companies.

Among other models for defending the public interest and counterbalancing the representations of companies, some jurisdictions have empowered their commissions and boards to regulate participation costs, i.e., to order companies under their jurisdiction and involved in the proceedings to reimburse the costs incurred by consumer groups that participated in the regulatory process. This power to prescribe/award costs is intended to enable other parties concerned, generally less wealthy and without a direct economic interest in the outcome of those proceedings, to participate adequately in them.

Do the rules for the awarding of costs by Canadian economic regulation boards enable and encourage the adequate participation of concerned public interest groups in the decision-making proceedings of those regulators? The present study attempts to answer this question, particularly by examining what is done abroad in this regard. In what foreign jurisdictions are economic regulation boards similarly empowered to award costs? Is the practice widespread or relatively exceptional? What types of organizations and sectors are regulated in this manner? What procedures, in Canada and abroad, could serve as an example and inspire practices favouring consumer representation before economic regulation boards?

The present report first discusses the reasons (particularly economic) for the necessity of government intervention in the sectors concerned, and presents a review of the

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various forms of economic regulation exercised by public authorities, mainly in North America.

After an examination of Canadian and foreign jurisdictions, we identify, amid the great diversity of regulatory bodies and ways of awarding financial assistance, seven (7) Canadian economic regulation authorities and five (5) American authorities that are empowered to award participation costs.

The awarding of participation costs at the decision-making proceedings of regulation authorities – and more broadly the financial compensation of public interest interveners – is studied in order to determine and understand the objectives and justifications leading to the adoption of such a practice. Based on the economic regulation authorities identified, an inventory is made of the rules and framework for awarding costs. Finally, from that diversity the best practices are identified, i.e., those most likely to meet the objectives of the power to award costs.

Several principles and reasons justify this practice. First, by enabling concerned and interested parties to participate in the proceedings of a regulation authority, and by awarding those parties the participation costs and thus the necessary resources for proper participation, the information basis for decision-making is broadened and diversified. Moreover, the extraordinary imbalance of means (particularly the means of representation) between regulated companies and consumers or private citizens is thereby mitigated; this is all the more necessary because consumers themselves, through the rates they are charged, will pay for the defence of interests opposed to their own. A decision taken following a fairer and better informed process is a better decision. Thus, in matters of economic regulation, decision-making quality and fairness go hand in hand.

The present report ends with a set of recommendations that aim – by aligning the awarding of costs with best practices – to improve the decision-making processes of economic regulation authorities and encourage the participation of public interest groups in decision-making proceedings.

More generally, the report concludes that recourse for the awarding of costs should be broadened, and that mechanisms should be established to financially compensate public interest interveners for their participation in many more government organizations and agencies.

French version available.

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