



EB-2010-0184

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a motion by the Consumers Council of Canada in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and Ontario Regulation 66/10.

**AMENDED NOTICE OF HEARING
AND
PROCEDURAL ORDER NO. 1**

On April 26, 2010, the Ontario Energy Board (the "Board") received a Notice of Motion from the Consumers Council of Canada ("CCC") regarding the assessments issued by the Board pursuant to section 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") (altogether, the "Motion").

In the motion, CCC requested that the Board:

1. cancel the assessments issued by the Board under section 26.1 of the Act;
2. determine whether the Board has jurisdiction to issue the assessments to distributors pursuant to unconstitutional legislation;
3. determine whether the Board has the jurisdiction to issue an assessment prescribing the formula by which the amount of the assessments may be recovered by distributors from their consumers pursuant to unconstitutional legislation;
4. cancel the authorization of Account 1521, Special Purpose Charge Assessment Variance Account;
5. determine whether the Board has the jurisdiction to authorize the creation of the variance account without an order having been issued under section 78 of the Act;

6. determine whether the Board has the jurisdiction to authorize the variance account pursuant to unconstitutional legislation; and
7. in the alternative, issue an order pursuant to section 32 of the Act stating a case in writing for the opinion of the Divisional Court as to whether section 26.1 of the Act is constitutionally valid.

This Notice is addressed to only CCC, the Attorney Generals of Ontario and Canada, and the Ministry of Energy and Infrastructure. The Board is not inviting intervention by other parties in the hearing of these preliminary matters.

If the preliminary questions are decided such that the matter moves on to be heard on its merits before the Board, the Board will issue a notice for that proceeding and will consider requests for intervention status from other parties at that time.

CCC filed the Motion under Rule 42 of the Board's Rules of Practice and Procedure (the "Rules"). Rule 42 of the Rules states that:

- 42.01 Subject to Rule 42.02, any person may bring a motion requesting the Board to review all or part of a final order or decision, and to vary, suspend or cancel the order or decision.
- 42.02 A person who was not a party to the proceeding must first obtain the leave of the Board by way of a motion before it may bring a motion under Rule 42.01.
- 42.03 The notice of motion for a motion under Rule 42.01 shall include the information required under Rule 44, and shall be filed and served within 20 calendar days of the date of the order or decision.
- 42.04 Subject to Rule 42.05, a motion brought under Rule 42.01 may also include a request to stay the order or decision pending the determination of the motion.
- 42.05 For greater certainty, a request to stay shall not be made where a stay is precluded by statute.

42.06 In respect of a request to stay made in accordance with Rule 42.04, the Board may order that the implementation of the order or decision be delayed, on conditions as it considers appropriate.

Rule 45 of the Rules states that "the Board may determine, with or without a hearing, a threshold question of whether the matter should be reviewed before conducting any review on the merits."

Before determining whether or not it will hear the Motion, the Board intends to hear argument on the questions set out below.

1. Is the Motion properly constituted? In other words, is there a Decision or Order of the Board that could be used as the basis for a Motion to Review under Rule 42 of the Rules?
2. Given Rule 42.02 of the Rules, does CCC have standing to bring the Motion?
3. Does the Board have the authority to cancel the assessments issued under section 26.1 of the Act?
4. Does the Board have the authority to determine whether section 26.1 of the Act (and Ontario Regulation 66/10 made under the Act) are constitutionally valid in the absence of another proceeding (i.e., can the constitutionality of the legislation be the only issue in the proceeding)?
5. Would stating a case to the Divisional Court be a better alternative? What would the rationale be for stating a case? What question should be used if a stated case were to be pursued? What would form the evidentiary record for the stated case?

The file number for this proceeding is EB-2010-0184.

The Board does not intend to make any cost awards in respect of the hearing regarding these preliminary matters.

If the aforementioned persons neither act in accordance with this Notice nor participate in the hearing in accordance with the notice, the Board may proceed without their participation and they will not be entitled to any further notice in the proceeding.

The Board considers it necessary to make provisions for the following matters related to this proceeding. The Board may issue further procedural orders from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. CCC shall file its written argument with the Board and serve its written argument on the Attorney General of Canada, the Attorney General of Ontario, and the Ministry of Energy and Infrastructure on or before **May 20, 2010**.
2. If the Attorney General of Canada, the Attorney General of Ontario, or the Ministry of Energy and Infrastructure wishes to file a response to CCC's written argument, they shall file their written response with the Board and serve their written response on CCC on or before **May 31, 2010**.
3. An oral hearing will commence in the Board's hearing room on **June 7, 2010** at 2300 Yonge Street, 25th Floor, Toronto, at 9:30 am.
4. Any filings to the Board must quote file number EB-2010-0184, be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.
5. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

Attention: Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Filings : www.errr.oeb.gov.on.ca
E-mail: Boardsec@oeb.gov.on.ca

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

ISSUED at Toronto, May 11, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary