

June 9, 2010

Ms. Kirsten Walli, Board Secretary
ONTARIO ENERGY BOARD
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

Re: EB-2010-0184: Consumers Council of Canada (CCC) and Aubrey LeBlanc motion in relation to section 26.1 of the *Ontario Energy Board Act, 1998*.

Industrial Gas Users Association (IGUA) Position on the Preliminary Questions.

Procedural Order No. 1 herein issued on May 11, 2010 indicates that the Board intends to proceed to first determine whether it will hear CCC's and Aubrey LeBlanc's motion, and indicates the preliminary questions that the Board intends to consider in making this threshold determination. Procedural Order No. 3 herein issued on May 28, 2010, directs that parties in support of the relief claimed by CCC shall file and serve their written arguments on or before June 9, 2010.

IGUA anticipates that a comprehensive record on these preliminary questions will be contained in the filings of CCC and involved Ontario ministries. IGUA will therefore provide its position in respect of these preliminary questions by way of this brief letter.

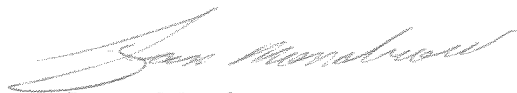
IGUA submits that:

1. Section 26.1 of the *Ontario Energy Board Act, 1998 (OEB Act)* purports to provide the Board with the authority to issue the "special purpose charge" assessments impugned on the motion, and to enforce those assessments by order.

2. The Board has acted on the basis of authority provided in section 26.1 of the *OEB Act* and has issued "special purpose charge" assessments and a direction for creation of deferral accounts related thereto.
3. Rule 42.02 of the Board's *Rules of Practice and Procedure* contemplates a process in which the moving party was not engaged, which was not the case in respect of Board's actions that are the subject of the current motion. As the Board did not engage in any public process in respect of its actions in issuance of the "special purpose charge" assessments and related deferral account directions, rule 42.02 does not apply as a bar to the standing of the moving parties to bring this motion.
4. The Board has the jurisdiction to determine whether section 26.1 of the *Ontario Energy Board Act, 1998* is constitutionally invalid, and further the Board has the legal authority to decline to act under that legislative provision should the Board find that it is constitutionally invalid.
5. The Board thus has the jurisdiction to make the determinations urged by CCC, and the authority to provide a remedy in the event that it makes such determinations (i.e. to rescind the assessments and deferral account directions issued).
6. The Board also has the authority pursuant to section 32 of the *Ontario Energy Board Act, 1998* to state a case for the opinion of the Divisional Court upon any question of law that is within the jurisdiction of the Board. The constitutional validity of section 26.1 of the act is a question of law which is within the jurisdiction of the Board to determine, and may properly be subject to a stated case pursuant to section 32 of the act.
7. IGUA submits that the Board should conclude the preliminary issues in favour of proceeding to hear and determine the motion.

Your truly,

MACLEOD DIXON LLP



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Julie Girvan (CCC)
Intervenors EB-2010-0184