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June 9, 2010

VIA E-MAIL

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge St.
Toronto, ON
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Dear Ms. Walli:

**Re: EB-2010-0184 Written Argument of the
Vulnerable Energy Consumers Coalition (VECC)**

As per Procedural Order No. 3, dated May 28, 2010 we have enclosed a copy of the Written Argument of the Vulnerable Energy Consumers Coalition (VECC) with respect to the above-noted proceeding. As directed we have also filed a copy via e-mail to the applicant and list of intervenors on record.

Thank you.

Yours truly,

Michael Janigan
Counsel for VECC

THE ONTARIO ENERGY BOARD

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

AND IN THE MATTER OF Assessments issued by the Ontario
Energy Board pursuant to section 26.1 of the Ontario Energy
Board Act and Ontario Regulation 66/10;

AND IN THE MATTER OF Rule 42 of the Rules of Practice
and Procedure of the Ontario Energy Board.

Written Argument of the Vulnerable Energy Consumers Coalition (VECC)

Pursuant to Procedural Order No. 3

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TO: Ontario Energy Board
Attention: **Kirsten Walli, Board Secretary**
2701-2300 Yonge Street
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AND TO: The Attorney General of Ontario
Attention: **Robert Donato**
Constitutional Law Division
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AND TO: The Attorney General of Canada
Department of Justice
Attention: **Roy Lee**
3400-130 King Street, West
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AND TO: Ministry of Energy and Infrastructure
Attention: **John Whitehead**
900 Bay Street, 4th floor
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Toronto, ON
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1. The Vulnerable Energy Consumers Coalition (VECC) is in support of the relief requested in the Notice of Motion of the moving parties of April 26, 2010 herein. VECC also supports the request for a stay of the assessment process initiated by the Ontario Energy Board (OEB, the Board) until this matter is heard and determined.
2. VECC is in agreement with the position advanced by the moving parties that the assessments issued to licensed electricity distributors (LDCs) by the OEB under 26.1 of the *Ontario Energy Board Act* for the Ministry of Energy and Infrastructure Conservation and Renewable Energy Program Costs, were beyond the jurisdiction of the OEB as a result of the constitution invalidity of sec 26.1 of the OEB Act. VECC understands that the Board wishes to determine the preliminary questions set out in Procedural Order No. 1 herein in advance of a hearing upon the Motion.

3. VECC has limited its argument to the questions in Procedural Order No. 1 that the OEB has posed that VECC understands will be the subject matter of the hearing of July 13, 2010.
4. VECC proposes to deal with the Board's preliminary issues set out in Procedural Order No. 1 as set out below:

(i) 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?

VECC notes that the CCC motion has also been brought under sec. 19 of the *OEB Act* allows the Board to hear and determine all questions of law and fact in all matters within its jurisdiction. The issue of the constitutionality of the law providing or its assessment made under sec. 26.1 of the *OEB Act* and O.Reg 66/10 is surely a matter to which sec. 19 applies. Rule 42 of the OEB Rules may also be applicable in the Board's implicit acceptance of jurisdiction to make the assessment that may form part of that order.

(ii) 2. Given Rule 42.02 of the Rules, does CCC have standing to bring the Motion?

VECC submits that as a matter of right and a matter of public interest that the moving parties have standing to bring this motion. VECC submits that the moving parties meet the requisite criteria developed by the Supreme Court of Canada and set out in *Finlay v. Canada (Minister of Finance)* [1986] 2 S.C.R. 607. Whatever the application of Rule 42.02, the issue of standing should be resolved in favour of the moving parties.

(iii) 3. Does the Board have the authority to cancel the assessments issued under section 26.1 of the Act?

Rule 43.01 would seem to provide appropriate authority. It seems difficult to believe that the Board's jurisdiction under sec.19 of the *OEB Act* would not include such authority.

(iv) 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)?

VECC submits that sec. 19 of the *OEB Act* may permit the determination of the constitutional validity of sec 26.1 of the *OEB Act* in the context of the motion by the moving parties.

(v) 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?

This is a valid alternative to the determination of the motion provided the appropriate interim relief in the form of a stay is provided.

5. VECC has reviewed the motion record and factum of the moving parties and is in accord with statement of facts contained therein. In the event that the OEB determines the preliminary issues in favour of the moving parties, VECC intend to file a factum in support of the issue of constitutional validity of sec. 26.1 of the *OEB Act* raised by the moving parties.
6. VECC notes that this motion raises issues of policy and regulatory practice that are of vital concern for all ratepayers. The denial of cost awards is a matter of concern to VECC and compromises its ability to effectively represent its constituents who are without resources to obtain representation.
7. VECC submits that the Board should grant interim relief in the form of a stay pending resolution of the issues of the motion. The balance of convenience warrants the issuance of such an order.

All of which is respectfully submitted this 9th day of June 2010.



Michael Janigan
Counsel for VECC