



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.

PROCEDURAL ORDER NO. 4

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") (the "Motion").

On May 11, 2010, the Board issued a Notice of Hearing and Procedural Order No. 1 (the "Notice") addressed to CCC, the Attorney Generals of Ontario and Canada, and the Ministry of Energy and Infrastructure. In the Notice, the Board stated that before determining whether or not it will hear the Motion, the Board intends to hear argument on a number of preliminary questions that were set out in the Notice. The Board also set dates for filing of written arguments and oral submissions. The Board issued an Amended Notice of Hearing and Procedural Order No. 1 on May 11, 2010 (the "Amended Notice").

On May 12, 2010, counsel for the Attorney General of Ontario filed a letter with the Board in which the Attorney General of Ontario and CCC jointly requested that the Board extend the timelines made in the Amended Notice. In response to this letter, the Board issued Procedural Order No. 2, which extended certain filing deadlines.

On May 20, 2010, the Board received a letter from the Industrial Gas Users Association seeking observer status in this proceeding. On May 21, 2010, the Board received a letter from Canadian Manufacturers & Exporters ("CME") seeking intervenor status in

the proceeding. In response to the intervention request, the Board issued Procedural Order No. 3, in which it: granted intervenor status to CME; allowed other interested persons to apply for intervenor status; set out timelines for the filing of evidence and arguments; and set a date for the oral hearing on the preliminary questions.

On June 3, 2010, the Board issued a decision on the intervention requests. The Board granted intervenor status to the Industrial Gas Users Association, Toronto Hydro Electric System Limited, Vulnerable Energy Consumers Coalition, Enbridge Gas Distribution Inc, and Union Gas Limited.

The Association of Power Producers of Ontario made a late intervention request and the Board granted that intervention request as well.

On July 13, 2010, the Board held an oral hearing to address the preliminary questions set out in Procedural Order No. 1.

In their pre-filed materials relating to the preliminary issues, certain parties had made arguments in favour of staying the assessments resulting from the application of section 26.1 of the Act until the Motion itself was heard on its merits. However, no party has brought a formal motion to stay the assessments that is supported by evidence. The Attorney General of Ontario argued in its responding materials that the granting of a stay had not been identified by the Board as one of the preliminary issues to be heard on July 13, and that the issue should therefore not be heard that day. In the alternative, the Attorney General of Ontario argued that the test for a stay had not been met, and should therefore be denied.

At the hearing, the Board determined that it would hear argument on the stay issue.

Upon hearing the arguments and reviewing the pre-filed materials, the Board is not satisfied with the state of the record regarding the stay issue. As the request for a stay was not made through a fully supported motion, the Board would like to afford parties the opportunity to file additional materials, including evidence to support their position.

The Board advised at the hearing on July 13 that it would allow parties to file a complete motion on the stay issue if necessary. As parties have indicated the need to have the issue of the stay resolved prior to July 30, the Board will permit parties to file evidence in accordance with the schedule set out below.

If no motions are filed, the Board will make a decision based on the existing record.

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. Any party wishing to file a motion for a stay shall file materials with the Board on or before **July 20, 2010**. All materials must be served on the Attorney General of Ontario, CCC and all intervenors in this proceeding.
2. Any party wishing to file responding materials shall do so on or before **July 23, 2010**. All responding materials must be filed with the Board and served on the Attorney General of Ontario, CCC and all intervenors in this proceeding.
3. An oral hearing will be held at the 2300 Yonge Street, 25th Floor, Toronto in the Board's North Hearing Room on **July 26, 2010**. The hearing will commence at 9:30 am.
3. 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 in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.
4. 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, July 15, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary