

August 23, 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) Request for Eligibility to Apply for an Award of Costs.**

We write as counsel to IGUA to request that the Board grant IGUA eligibility to apply for an award of costs related to its participation in this matter.

### **Background - Procedural History**

In its Notice of Hearing and Procedural Order No. 1 issued herein on May 11, 2010, the Board directed that it was not inviting intervention by parties other than CCC, the Attorney Generals of Ontario and Canada and the (then) Ontario Ministry of Energy and Infrastructure. That Procedural Order No. 1 then set out preliminary questions that the Board indicated it would consider before determining whether or not the Board would proceed to hear CCC's motion.

By letter dated May 20, 2010 submitted herein on behalf of IGUA, we indicated the basis for IGUA's interest in the progress and outcome of CCC's motion. In deference to the procedural directions that had been provided by the Board, IGUA sought to engage herein through a request

for "observer status", as contemplated by Rule 25 of the Board's *Rules of Practice and Procedure*. IGUA's request for observer was subsequently granted by the Board.

On May 28, 2010 the Board issued Procedural Order No. 3 herein, in which it reversed its earlier determination regarding the admission of other parties as intervenors and directed dates by which parties seeking intervenor status could apply. IGUA's request for intervenor status was filed on June 1, 2010.

Procedural Order No. 3 also provided that any intervenors supporting the relief sought by CCC shall file written argument by June 9, 2010. IGUA filed brief supporting written submissions on June 9, 2010.

An oral hearing date for argument on the preliminary issues was set for July 13, 2010. As gas customers have not to date been assessed any portion of the Special Purpose Charge, and as the July 13<sup>th</sup> hearing was focused only on the preliminary issues set by the Board, IGUA determined that it would defer to others to pursue oral argument on July 13<sup>th</sup>. In lieu of appearance in person on July 13<sup>th</sup>, IGUA elected to provide brief submissions by way of letter dated July 12, 2010. In our July 12<sup>th</sup> letter IGUA reiterated its earlier written submissions and briefly elaborated on its unique perspective on the preliminary issues at hand.

In its August 5, 2010 Decision with Reasons herein the Board determined, *inter alia*, that given the expanded participation in the proceeding, and the value that the Board sees in having the expanded participation, the Board would reverse its previous direction and allow costs.

### **Responsible Participation.**

IGUA submits that it has acted responsibly in respect of its participation in this matter to date. IGUA has taken steps to advise the Board and other interested parties of its interests, concerns and positions in this matter, while remaining respectful of the Board's early (and since reversed) procedural determinations regarding acceptance of interventions and award of costs. IGUA has been careful to add its perspective only where relevant and complementary to, but not repetitive of, the very active participation of other parties.

When the Board indicated that it would not accept interventions, IGUA instead availed itself of the Board's rules on observer status to register its interest and participation.

When the Board indicated that it would reverse its earlier determination and accept interventions, IGUA intervened promptly.

When the Board allowed for written submissions, IGUA provided brief written submissions, and deferred to the extensive work of others in completing the record regarding the preliminary issues rather than duplicating that work.

When the Board made provision for oral argument on the preliminary issues, IGUA determined that, given the extensive involvement of others, the preliminary stage of the matter, and the fact

that gas consumers were not yet subject to SPC assessment, it would defer to the oral argument of others on the preliminary issues. Instead, in further brief submissions, IGUA provided information on a narrow point that it determined was relevant and might assist the Board in considering how the matter should proceed. (In our July 12<sup>th</sup> letter on behalf of IGUA, we noted that evidence regarding the lack of participation in the SPC funded programs by industrial energy consumers would be a relevant consideration for the Board should it proceed to consider the motion on its merits.)

The writer has been out of the office from August 2<sup>nd</sup> on both planned vacation and unplanned absence, and largely unavailable until today. The Board issued its decision regarding cost eligibility on August 5<sup>th</sup>. Today is the first opportunity that the writer has had to carefully review and respond to that decision. IGUA's response to that decision should thus be considered to be reasonably prompt.

### **Basis for Cost Eligibility.**

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IGUA is an association of industrial companies located in the Canadian provinces of Manitoba, Ontario and Québec who use natural gas in their industrial operations. IGUA was first organized in 1973 and it provides a coordinated and effective public policy and regulatory voice for those industrial firms depending on natural gas as a fuel or feedstock. IGUA has become the recognized voice representing the industrial user of natural gas before regulatory boards and governments at both the provincial and national levels.

As set out in our July 12<sup>th</sup> letter as filed with the Board herein, IGUA has a particular perspective on the substance of the matters in issue. While the section 26.1 assessments do not currently apply to natural gas distribution ratepayers, it is IGUA's understanding that they will in future. As set out in the June 23<sup>rd</sup> Written Argument of the Attorney General of Ontario (Ontario), there are two programs which are now funded by the special purpose charge (Ontario Written Argument, paragraph 9). Neither of these programs are targeted at industrial energy consumers, and to IGUA's knowledge no industrial energy consumer has availed itself of either of these programs. Notwithstanding these facts, industrial electricity consumers are subject to the current special purpose charge assessment.

The foregoing facts speak to who benefits from the programs in issue and who pays the costs of those programs under the legislative scheme, which all goes to the legitimacy of characterization of the section 26 assessments as a "regulatory charge".

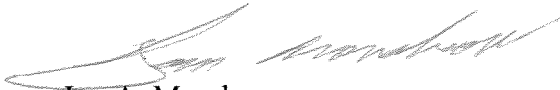
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As a party primarily representing the direct interests of industrial consumers (i.e. ratepayers) in relation to regulated services, IGUA has in the past been determined to be eligible for cost awards pursuant to section 3.03(a) of the Board's *Practice Direction on Cost Awards*.

**Conclusion.**

IGUA submits that it should not be prejudiced in having acted responsibly, and in accord with the Board's evolving procedural directions herein. IGUA therefore requests that it be determined eligible for an award of its reasonably incurred and modest costs for participation to date, and of its reasonably incurred costs going forward.

Your truly,  
**MACLEOD DIXON LLP**



Ian A. Mondrow

- c. Murray Newton, IGUA  
Robert G. Warren (WeirFoulds LLP)  
Janet E. Minor (Ministry of the Attorney General of Ontario)  
Intervenors

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