



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. 5

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 would hear the Motion, the Board intended 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 later opened the proceeding to wider participation and granted intervenor status to: Canadian Manufacturers & Exporters ("CME"); the Industrial Gas Users Association ("IGUA"); Toronto Hydro Electric System Limited; Vulnerable Energy Consumers Coalition ("VECC"), Enbridge Gas Distribution Inc.; Union Gas Limited; and the Association of Power Producers of Ontario ("APPrO").

On July 13, 2010, the Board held an oral hearing to address the preliminary questions set out in the Amended Notice.

On July 19, 2010, CME filed a notice of motion seeking a stay of the assessments issued by the Board on April 9, 2010 until such time as matters pertaining to the

constitutional validity of Ontario Regulation 66/10 have been decided on their merits (the "CME Motion"). The CME Motion was argued before the Board on July 26, 2010. The Board issued a decision and order (without reasons) later that day dismissing the CME Motion.

On August 5, 2010, the Board issued its Decision with Reasons on the preliminary issues as well as the reasons for the dismissal of the CME Motion.

The Board indicated that it would set a date for the filing of the evidence by the Attorney General by procedural order.

Costs were requested by a number of intervenors, namely CCC, CME, VECC, and APPrO. In the Decision with Reasons, the Board found that CCC, CME, and VECC would be eligible for cost awards. On August 23, 2010, IGUA filed a letter with the Board requesting cost award eligibility. In the letter, IGUA provided the basis for its eligibility and reasons for the late request. Although gas consumers are not caught by the special purpose charge regulation at this time, as the Board noted in its Decision with Reasons, the assessments may be extended to the natural gas sector in the future and that natural gas utilities and customers will also benefit from having the constitutional issue decided. The Board therefore accepts IGUA's submission with respect to cost eligibility and finds it eligible to apply for its costs in this proceeding. The Board will also make provision for eligible parties to file their cost claims for their costs up to the date of the issuance of Decision with Reasons on the motion for a stay (August 5, 2010).

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. The Attorney General of Ontario shall file its evidence on the constitutional issue with the Board and serve it on all other intervenors in this proceeding on or before **October 22, 2010**.
2. The Attorney General will provide a witness or witnesses to answer questions from parties regarding its evidence on **November 5, 2010**, at 9:30 a.m. in the Board's

hearing room at 2300 Yonge Street, 25th Floor, Toronto, Ontario. This session will be transcribed and will form part of the record of this proceeding. No Board members will be in attendance.

3. Any intervenor wishing to file evidence shall inform the Board and all other parties of this intention by **November 10, 2010**.
4. In the event no intervenor evidence is to be filed, parties shall pre-file their written final submissions with the Board and serve on all other parties on or before **November 22, 2010**.
5. The Board will hear oral argument on this matter on **December 1, 2010**. The Board may extend the hearing for a second day on December 2, 2010, if necessary to do so. The oral hearing will commence at 9:30 a.m. in the Board's hearing room at 2300 Yonge Street, 25th Floor, Toronto, Ontario.
6. Parties that have been found eligible for an award of costs may file their cost claims for the period up to August 5, 2010 by **September 24, 2010**. Cost claims must be filed in accordance with the Board's *Practice Direction on Cost Awards*. The Board will make provisions regarding cost claims for later phases of the proceeding at a later date.
7. All 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.
8. 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, September 14, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary