

October 1, 2010

Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

RE: EB-2010-0184 ("**CCC Motion**") Procedural Order No. 5 dated September 14, 2010
("**Procedural Order No. 5**")

Dear Ms. Walli:

We are counsel to the Association of Power Producers of Ontario ("**APPrO**"). On September 15, 2010, we received Procedural Order No. 5, wherein the Board found that a large group of natural gas customers represented by the Industrial Gas Users Association ("**IGUA**") was eligible to apply for its costs incurred in the CCC Motion. This decision stands in marked contrast to the Board's finding on the cost eligibility applicable of a similarly situated, large group of natural gas consumers represented by APPrO. As a result, in accordance with Rules 41, 42, 43 and 44 of the *Ontario Energy Board Rules of Practice and Procedure*, and sections 1, 3 and 5 of the *Ontario Energy Board Practice Direction on Cost Awards* (the "**Practice Direction**"), APPrO hereby requests that the Board reconsider and vary its decision on the potential cost eligibility of APPrO in the CCC Motion.

Support for APPrO's Cost Eligibility

In Procedural Order No. 5 the Board found that:

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.

APPrO hereby submits that its members constitute a class of large natural gas customers that may be most significantly impacted by the Special Purpose Charges that are the subject matter of the CCC Motion, and therefore should similarly be afforded cost eligibility. APPrO natural gas customers may, in fact, be in the special circumstance of being uniquely and disproportionately affected by special purpose charges applicable to gas loads and have the additional burden of assessing and determining the treatment of such charges under government regulated power purchase agreements.

First, the disproportionate potential impact on electricity generating gas consumers is supported by the recently released the 2010 Natural Gas Market Review dated August 20, 2010, prepared by ICF International Inc. ("ICF") for the Board (the "ICF Report"). In the ICF Report, ICF found that electricity generating natural gas customers are responsible for 24% of the natural gas demand in the Province. Second, if the Special Purpose Charges are allocated on a volumetric basis, as currently proposed in the electricity sector, APPrO members stand to bear a very significant and disproportionate amount of the assessed charges applicable to natural gas customers. Finally, the ultimate treatment of the proposed special purpose charges applicable to natural gas generation customers may ultimately affect both gas and electricity rate payers. APPrO therefore submits that its natural gas generation customers do, in fact, face special circumstances and it is therefore in the public interest to afford APPrO gas consumers with the ability to participate fully in the CCC Motion through similar cost eligibility treatment afforded to other, less affected gas consumers. In light of these special circumstances and the Board's recent decision applicable to other gas loads, APPrO respectfully requests that the Board reconsider its decision and afford APPrO cost eligibility in the CCC motion.

APPrO respectfully submits that its participation in the CCC motion to date also supports its cost eligibility. Specifically, in Procedural Order No. 4, the Board found that:

Under the circumstances, the Board will not rely on section 30 of the Act for costs. ...The Board also notes that the assessments may be extended to the natural gas sector in the future. Section 26.1 of the Act contemplates gas distributors being included in the assessments. Therefore, natural gas utilities and customers will also benefit from having the constitutional issue decided. The Board has therefore determined that it would be more efficient for the Board to provide funding to groups representing the interests of customers that may be affected by this proceeding through section 26 of the Act. ...Based on section 3 of the Practice Direction, the Board finds that CCC, CME, and VECC are eligible to apply for their costs of participating in this proceeding.

APPrO submits that it participated responsibly and other intervenors, including CME relied in part upon APPrO submissions in its argument and requested relief related to the proposed stay. APPrO provided unique hybrid relief options for the Board to consider and cooperated with other intervenors to facilitate efficiency and avoid duplication. APPrO's responsible participation to date was also supported by the Board, which expressly found that in originally denying APPrO cost eligibility, "This is in no way a comment on the contributions made by APPrO, to date, in this matter."

On the basis of the foregoing, APPrO respectfully requests that the Board vary its original decision on APPrO cost eligibility, recognize the special circumstances of electricity generation gas loads, and provide APPrO gas consumers with cost eligibility treatment consistent with that afforded to other, less affected loads.

Yours truly,

per: Elisabeth DeMarco
Elisabeth DeMarco