

**Ministry of the
Attorney General**

Constitutional Law Branch

720 Bay Street, 4th Floor
Toronto ON M7A 2S9

Tel: (416) 326-4137

Fax: (416) 326-4015

Janet.Minor@ontario.ca

**Ministère du
Procureur général**

Direction du droit constitutionnel

4^e étage, 720 rue Bay
Toronto ON M7A 2S9

Tél: (416) 326-4137

Téléc.: (416) 326-4015

Janet.Minor@ontario.ca

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DATE: October 18, 2010

LAW FIRM / MINISTRY	TO	FAX NO.
Ontario Energy Board	Kirsten Walli	416-440-7656
WeirFoulds LLP	Robert B. Warren	416-365-1876
Borden Ladner Gervais LLP	Peter Thompson	1-613-230-8842
Aird & Berlis LLP	Fred Cass	416-863-1515
Macleod Dixon LLP	Ian Mondrow	416-360-8277
Borden Ladner Gervais LLP	J. Mark Rodger	416-361-7088
McCarthy Tetrault LLP	George Vegh	416-868-0673
Public Interest Advocacy Centre	Michael Janigan	1-613-562-0007
Macleod Dixon LLP	Elisabeth DeMarco	416-360-8277
FROM: Janet Minor EXPÉDITEUR: Tel : (416) 326-4137		
NUMBER OF PAGES INCLUDING COVER: NOMBRE DE PAGES, Y COMPRIS LA PRÉSENTE: 4		
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Re: Ontario Energy Board Board File No.: EB-2010-0184		

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BY FAX (416) 440-7656

October 18, 2010

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: Motion by the Consumer's Council of Canada ("CCC") and Aubrey LeBlanc in relation to s. 26.1 of the *Ontario Energy Board Act, 1998* (the "Act") and Ontario Regulation 66/10

Board File No.: EB-2010-0184

Requested Amendment of Procedural Order No. 5

We write in order to request an Amendment to Procedural Order No. 5 ("Order") of the Ontario Energy Board ("OEB") in this proceeding, pursuant to Rule 4.03 of the OEB Rules of Practice and Procedure.

Upon further review of the Order, the Attorney General notes a series of concerns. Pursuant to paragraph 3 of the Order, the proposed date upon which the Intervenor must inform the Board and all other parties of their intention to file evidence is November 10, 2010. (No date is specified for the delivery of such evidence, if any.) The November 10th date is five days *subsequent* to the proposed date of the cross-examination of the Attorney General's affiant on November 5, 2010. In our view, proceeding in this manner is irregular and would compromise the fairness of the proceedings. In the normal course of civil proceedings, the Applicant and other responding parties would exchange evidence prior to the commencement of cross-examinations.

Making a determination to adduce evidence, and thereafter filing such material, *following* participation in the cross-examination of the Crown's affiant and an evaluation of the merits of

such testimony, would unduly advantage the Intervenor, to the prejudice of the Attorney General. We respectfully request that the Order be amended to stipulate that service of Intervenor evidence (as well as the Attorney General's evidence in Reply, if any) should occur after receipt of the Attorney General's original affidavit, but prior to the cross-examination of the Attorney General's affiant.

Further, scheduling issues have arisen requiring the Attorney General to seek an amendment to certain dates set out in the Order. Owing to a previously scheduled trip out of the country to attend a wedding, I will not be in Canada between the dates of November 3-10, 2010, making my attendance at the scheduled cross-examination on November 5, 2010 impossible (Order, paragraph 2). Moreover, the Attorney General's affiant will also be abroad from October 15-31, 2010, inclusive, impeding the preparation and swearing of the Crown's affidavit by the October 22, 2010 deadline (Order, paragraph 1).

In the result, the Attorney General respectfully requests that paragraphs 1-4 of the Order be amended, and replaced with the following timetable:

- 1) the Attorney General of Ontario shall file its evidence on the constitutional issue with the Board and serve it on all other Parties in this proceeding on or before November 5, 2010;
- 2) Any other Party interested in filing responding evidence shall file its evidence on the constitutional issue with the Board and serve it on the Attorney General and all other Parties in this proceeding on or before November 11, 2010;
- 3) The Attorney General shall have 3 business days following receipt of responding evidence, if any, from the Party(s) to file reply evidence on the constitutional issue with the Board and serve it on all other Parties in this proceeding;
- 4) Cross-examination, if any, on the evidence filed by all Parties will take place during the week commencing November 15, 2010, on a date(s) to be determined by the Board, at the Board's hearing room at 2300 Yonge St., 25th Floor, Toronto, ON. The Parties will produce their respective affiants at such time in order to facilitate the cross-examinations. The session will be transcribed and will form part of the record of this proceeding. No Board members will be in attendance;
 - a. The Parties shall file their written final submissions with the Board and serve on all other parties as follows:
 - i. the Applicants, the Consumer's Council of Canada ("CCC") and Aubrey LeBlanc, and all Intervenor, on or before November 23, 2010;
 - ii. the Attorney General, on or before November 26, 2010;
 - iii. the Applicants, CCC and Aubrey LeBlanc, shall reserve the right to file written reply submissions, if any, on or before November 29, 2010.

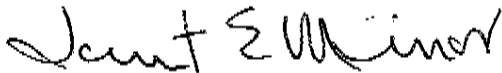
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The Attorney General is not requesting any amendment to paragraphs 5-8 of the Order. In particular, the Attorney General does not seek to adjourn the date of the oral argument, which is presently scheduled for December 1-2, 2010.

We have canvassed this proposed amendment to the Order with counsel for all parties involved in the litigation. Mr. Robert Warren, Counsel for the Applicants, CCC and Aubrey LeBlanc, and Mr. Peter Thompson, Counsel for the Intervenor, the Canadian Manufacturers & Exporters (moving party on the motion for an interim stay of the assessments), consent to the Attorney General's proposed timetable.

For the foregoing reasons, the Attorney General of Ontario respectfully requests that the Board, pursuant to its authority under Rule 4.03, amend the Order in accordance with the revised timetable outlined above.

Yours very truly,



Janet E. Minor
General Counsel

JEM/av

cc: Robert Warren, Counsel for the Applicants, CCC & Aubrey LeBlanc (by Fax)
All Intervenors (by Fax)