



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.

DECISION AND PROCEDURAL ORDER NO. 6

Background

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") that 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 intervenors in this proceeding are: 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.

Cost Award Eligibility

Costs were requested by a number of intervenors, namely CCC, CME, VECC, and APPrO. In its Decision with Reasons, issued on August 5, 2010, 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.

On September 14, 2010, the Board issued Procedural Order No. 5 in which the Board found IGUA eligible to apply for its costs in this proceeding and made provision for eligible parties to file their cost claims for their costs up to August 5, 2010.

On October 1, 2010, APPrO filed a letter with Board requesting that the Board reconsider and vary its decision on APPrO's cost eligibility. Rule 42.03 of the Board's Rules of Practice and Procedure states that a notice of motion for a motion to review shall be filed and served within 20 calendar days of the date of the order or decision. The Board notes that APPrO's motion to review was received well after 20 calendar days of the August 5, 2010 Decision with Reasons. However, the Board also notes that it would appear that the precipitating factor in APPrO filing its motion to review was the Board's decision on IGUA's cost eligibility which was issued on September 14, 2010. APPrO's motion to review was filed within 20 days of the decision on IGUA's cost eligibility. Taking that time period into account, the Board will consider APPrO's motion to review the Board's decision on APPrO's cost eligibility.

APPrO has argued that the decision not to grant it cost eligibility "stands in marked contrast to the Board's finding on the cost eligibility applicable to a similarly situated, large group of natural gas consumers represented by APPrO." APPrO is referring to the Board's decision to grant cost eligibility to IGUA. The Board would like to take this opportunity to point out that IGUA is eligible for cost awards under section 3.03 of the Practice Direction on Cost Awards. This is not true for APPrO, who represents the interests of power producers, as it is specifically excluded from cost award eligibility by section 3.05 of the Practice Direction unless APPrO can prove there are special

circumstances that warrant cost award eligibility for a particular process. Therefore, the two situations of the two parties are not equivalent.

That being said, the Board acknowledges that the legislation provides that the special purpose charge may be extended to natural gas consumers in the future. APPrO argued in its October 1, 2010 letter that "its members constitute a class of large natural gas customers that that may be most significantly impacted by the Special Purpose Charges" and that APPrO natural gas customers "may , in fact, be in the special circumstances of being uniquely and disproportionately affected by special purpose changes applicable to gas loads and have the additional burden of assessing and determining the treatment of such charges under government regulated power purchase agreements."

The Board is persuaded by APPrO's arguments and will therefore vary its original decision and grant APPrO cost eligibility in this proceeding. APPrO shall file its cost claim in accordance with the order set out below.

Timelines in Procedural Order No. 5

In addition to cost award matters, Procedural Order No. 5 also set out the next steps, and the timelines for the next steps, for this proceeding.

On October 18, 2010, counsel for the Attorney General of Ontario filed a letter with the Board seeking to amend the timelines set out in Procedural Order No. 5. The letter states that counsel for CCC, Aubrey LeBlanc and CME have consented to the timelines proposed by the Attorney General.

The Board has not received any objection to the Attorney General's proposed timelines from any intervenor in this proceeding.

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 **November 5, 2010**.
2. Any intervenor wishing to file evidence on the constitutional issue shall file its evidence with the Board and serve it on the Attorney General of Ontario and all other intervenors in this proceeding on or before **November 11, 2010**.
3. The Attorney General shall file reply evidence, if any, on the constitutional issue with the Board and serve it on all other intervenors in this proceeding on or before **November 15, 2010**.
4. The Attorney General of Ontario and any intervenor that filed evidence on the constitutional issue will provide witnesses to answer questions regarding their respective evidence on **November 16, 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.
5. Any intervenor wishing to file a final written submission shall file its submission with the Board and serve on the Attorney General of Ontario and all other intervenors on or before **November 23, 2010**.
6. The Attorney General of Ontario shall file its final written submission with the Board and serve on all other intervenors on or before **November 26, 2010**.
7. Any intervenor wishing to file a written reply submission shall file its reply submission with the Board and serve on the Attorney General of Ontario and all other intervenors on or before **November 29, 2010**.
8. 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.

9. APPrO shall file its cost claim for the period up to August 5, 2010 by **November 5, 2010**. Cost claims must be filed in accordance with the Board's Practice Direction on Cost Awards.
10. 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.
11. 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, October 22, 2010

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary