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 and Aubrey LeBlanc in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and Ontario Regulation 66/10.

AFFIDAVIT OF JOHN WOLNIK
November 11, 2010
(to be sworn on or before November 16, 2010)

I, John Wolnik, of the City of London, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am an Associate of Elenchus Research Associates Inc. and President of GSA Energy Company. I have over thirty-five (35) years of experience in the natural gas and power sectors where I have worked as an independent consultant and in senior management for utilities and power companies active in the Ontario energy sector. Highlights of my experience and background are set out in my curriculum vitae, which is attached as Appendix "A" to this Affidavit. I have personal knowledge of the facts and information set out herein, and do verily believe them to be true and accurate.

2. I swear as evidence this Affidavit on behalf of the Association of Power Producers of Ontario ("APPrO") on the motion made by the Consumers Council of Canada and Aubrey LeBlanc, alleging that the special purpose charge assessments (the "Special Purpose Charge" or "SPC") administered by the Ontario Energy Board (the "Board") pursuant to Section 26.1 of the *Ontario Energy Board, 1998* (the "Act") and Ontario Regulation 66/10 (the "Regulation") amount to an unconstitutional indirect taxation that is *ultra vires* the Province of Ontario.

Background

3. Electricity distributors and the Independent Electricity System Operator (the "IESO") have been assessed and have been required to pay, pursuant to s. 26.1 of the Act, the Regulation and the Board's decision dated August 5, 2010, the costs of certain Ontario government programs including the Home Energy Savings Program ("HESP") and the Ontario Solar Thermal Heating Incentive ("OSTHI"). Electricity distributors and the IESO have posed, or will pass, such assessments on to electricity customers through their distribution bills.

4. I understand from the Board's decisions in this matter that such Special Purpose Charge assessments may be extended to the natural gas sector, natural gas distributors and ultimately to natural gas customers (on volumetric basis) in the future, and I verily believe this to be true.

5. Any future SPC charges that apply to large natural gas customers, including Ontario gas-fired power generators ("Generators") may pose significant challenges for the efficient and effective operation of Generators in that:

   (a) the SPC charges that may be assessed on Generators may be very significant;

   (b) in certain cases the SPC costs may not be passed through to end-use customers, and Generators may therefore face an additional, unmitigated financial burden as a result of the SPC; and

   (c) the SPC costs may be ultimately imposed on Generators despite that fact that there is no relationship between the HESP and OSTHI programs, and Generators neither cause nor benefit from the HESP, OSTHI programs and the resulting SPC.

(a) The SPC charges that may be assessed on Generators may be very significant.

6. Gas-fired generators represent a large and the fastest growing natural gas consuming group with in the Province of Ontario.

7. During 2010, the Board conducted a stakeholder process (EB-2010-0199) to review the Ontario natural gas marketing in the ("2010 Natural Gas Market Review". The Board examined recent developments in the North American gas supply markets and considered implications for the Ontario natural gas market. The Board commissioned ICF International ("ICF") to examine the North American gas market and how changes in supply and demand could impact the Ontario marketplace. A copy of the ICF report prepared for the Board in that proceeding is attached as Appendix "B" to this Affidavit and is referred to as the "ICF Report".

8. The ICF Report indicates that the gas consumed by Generators 1995 was 9% of the 0.9 trillion cubic feet (tcf) of overall demand for natural gas in Ontario[1] - approximately 81 billion cubic feet (bcf). The ICF Report also indicates that by 2009, the natural gas consumption by Generators had grown to 24% of the Province's annual gas consumption (1.0 tcf) - approximately 240 bcf.

9. The ICF Report further indicates that, as a result of energy policies of the Province of Ontario, natural gas consumption by Generators would continue to grow. ICF forecasts that, by 2020, overall natural gas consumption within Ontario would be 1.3 tcf, of which 32% or 416 bcf would be consumed by Generators. Figure 1 graphically illustrates this growing use of gas by Generators.

[1] Exhibit 13 ICF International, August 20, 2010, EB-2010-0199

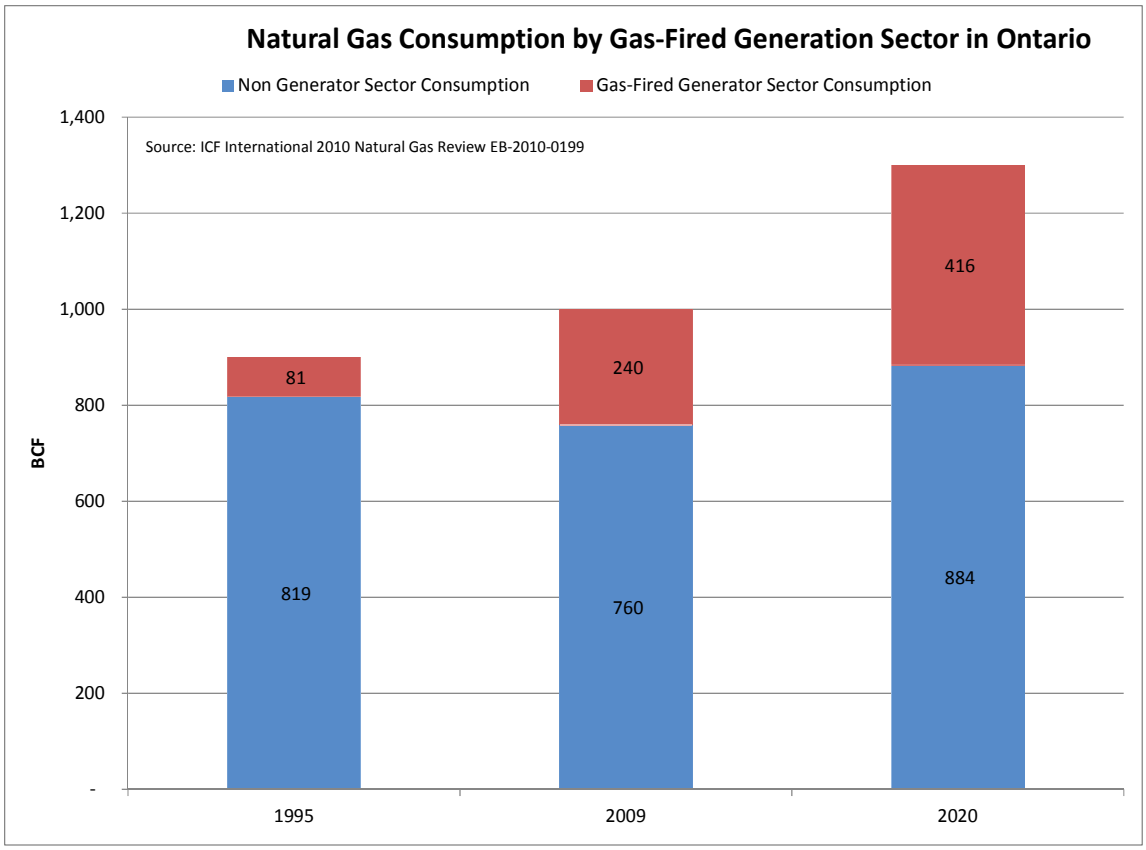

Figure 1 Gas Consumption in Ontario

10. As Figure 1 clearly illustrates that Generators currently use about one quarter of all of the gas consumed in Ontario and ICF forecast this share to grow to approximately one third of all gas consumed in Ontario by 2020.

11. If the SPC is assessed upon gas distributors and ultimately charged to gas customers, including the Generators on a volumetric basis, then Generators could pay up to one third of the total SPC assessed on the Ontario natural gas sector. Therefore, if the total SPCs to gas LDCs are in the range of one hundred and fifty (150) million dollars each year, Generators may be required to pay up fifty (50) million dollars of this SPC charge on an annual basis. These costs are very significant to Generators and the Ontario electricity sector.

(b) Generators may face additional, unmitigated financial burden as a result of the SPC.

12. The majority of gas power generation in Ontario can be classified as one of Non-Utility Generators ("NUGs") plants that were developed in the 1990s by various non-utility

generators under power purchase agreements (“PPAs") entered into originally with Ontario Hydro or "OPA Generators", and more recent plants built with power sold to the Ontario Power Authority (“OPA”).

13. NUG Generators represent, in aggregate, over 1200 MW of power supply in Ontario. The PPAs start to reach the end of their term in 2010 and all NUG PPAs will have terminated by 2022. These contracts are now administered by the Ontario Electricity Finance Corporation (“OEFC”). The base NUG contract price was set at the time contract was entered into. This price was to be indexed each year according to the former Ontario Hydro ‘Direct Customer Rate (“DCR”). This indexing mechanism was based strictly on the sales rate of power to large customers not the input costs (including gas costs) for the NUG Generator. The DCR was discontinued at the onset of Ontario electricity market opening, and the OEFC has replaced this index adjustment mechanism with a new mechanism. The replacement indexing mechanism (the “DCR_{new}”)[2] is now derived from the electricity Total Market Cost (“TMC”). The TMC includes the Hourly Ontario Electricity Price, wholesale market service charges, electrical transmission charges, and the debt retirement charge, among others. This indexing mechanism is <u>not</u> linked to input cost components such as changes to the gas LDCs rates.

14. Newer plants that have entered into power PPAs with the Ontario Power Authority (“OPA”) in the last 5 years include large clean energy supply (“CES”) contracts, and combined heat and power (“CHP”) contracts. The CES contracts include Generator contracts where changes to the gas delivery and management (“GDM”) costs are borne by the Generator, and contracts where the GDM costs are shared between the Generator and the OPA.

15. The final executed contracts between the OPA and any Generator are confidential, however the draft contracts included in the OPAs Request for Proposal ("RFP") were not subject to negotiation. These publicly released CES contracts include the following:

    (a) Contracts that do not explicitly provide for recovery of cost increases related to GDM arrangement with the utilities. In these cases the cost increases would be to the account of the Generator. While Generators submitting bids in this

[2] Ontario Electricity Finance Corporation website

procurement processes may have provided for cost recovery of projected GDM costs, the prices offered by Generators was subject to competitive pressures and Generators would have not foreseen, and been able to make provision for, the SPC costs in their bids.

(b) Contracts where there is an explicit cost sharing arrangement of the GDM costs with the OPA. In these cases the Generator would not have full cost exposure for its share of the GDM costs but would be required to bear a portion of such costs. In the Northern York Region RFP for example, (see Schedule 2) 35% of changes in the GDM costs are borne by the generator and 65% are recovered from the OPA[3].

16. The OPA also entered into combined heat and power ("CHP") contracts for the procurement of power. These power generation plants also provided for the generation of steam which was sold separately. Under these contractual arrangements CHP Generators the bid prices are also very unlikely to have provided for or anticipated, the SPC costs and related cost recovery. Generators would therefore be unable to recover these additional costs.

17. Generators have not anticipated or planned for this charge to apply to their natural gas rates. In many cases, they may have no ability to recover the SPC charge within the price of generated electricity or through other mechanisms. In these cases, Generators will be required to directly absorb the SPC costs as a significant, additional financial burden.

(c) SPC amounts may be imposed on Generators, which have no connection to, or benefit from, the HESP and OSTHI programs or the SPC.

18. The HESP program that gives rise to a substantial portion of the SPCs assessed, applies only to home owners. Generators cannot, and do not, take part in the program or receive any of the available funds.

19. Similarly, no Generator has received funds or otherwise benefited from the OSTHI. This reflects the reality that the design and related approvals of Generators are, by and large, fixed at the time of construction.

20. There appears to be no relationship whatsoever between the HESP, the OSTHI, the resulting SPCs, and the amounts that may be assessed through the SPC on Generators.

[3] Northern York Region Peaking Generation Contract – Draft June 13, 2008, Exhibit S, clause 6(a)

Generators neither cause nor benefit from the programs and may, in fact, face additional financial burden as a result of the SPC.

21. It is my view that the SPC would negatively and significantly impact both Generators and the Ontario electricity sector.

22. I swear this Affidavit for the purposes outlined above and for no other improper purpose.

SWORN BEFORE ME at the City of London, in the Province of Ontario, this ___ day of November, 2010

JOHN WOLNIK

A Commissioner for Oaths in and for the Province of Ontario

John Wolnik, P. Eng. MBA

jwolnik@elenchus.ca 34 King Street East, Suite 600, Toronto, ON M5C 2X8 519-474-0844

ASSOCIATE

John Wolnik is an Associate of Elenchus Research Associates Inc., and President of GSA Energy Company. He has over 35 years of experience in many sectors of the natural gas and power industries working both as an independent consultant and in senior management roles for Union Gas and Westcoast Energy.

As a consultant, he has provided support for a number of companies in the areas of: regulatory and litigation support, new project development for gas and power related projects, and commercial and regulatory advice on natural gas supply, transmission, storage and distribution related matters.

As Director of Business Development for Westcoast Energy responsible for underground gas storage and gas pipeline project evaluation and development, he acted as project manager on the evaluation and implementation of a number of new pipeline and underground gas storage projects. He has business development experience in Canada and the US as well has had international experience. Responsible for acquiring all of the Union Gas' system gas supply, John developed a strong foundation in gas supply and transportation matters within Canada and the US. He was also instrumental in restructuring Union Gas' supply portfolio and transitioning old style agreements to the market based environment. He has also experience in utility operations, and engineering.

John has a Master's Degree in Business Administration and a degree in Civil Engineering both from McMaster University in Hamilton.

PROFESSIONAL OVERVIEW

Consulting

Natural gas regulatory and commercial matters in all sectors of the natural gas industry including project pipeline and storage assessment and development

Employment/Experience

2004 – Present, Consulting

Examples of recent assignments include:

- Developed new natural gas National Energy Board regulated transmission service and rate design to attract and retain loads
- Actively participated in many LDC natural gas rate cases as well as other non-rate related regulatory proceedings
- Actively participated, including leading and supporting evidence in a variety of OEB sponsored initiatives on behalf of customers including:
  - Storage & Transportation Access Rule
  - Service Process Improvements
  - Storage Allocation Proceeding
  - Natural Gas Electricity Interface Review
  - Natural Gas Forum
- Active participation in TransCanada Tolls Task force to evaluate rate and service proposals and provide feedback on alternative mechanism
- Market evaluation and assessment
- Negotiated new gas services with utilities on behalf of gas generators
- Business and Project Development Support
- Advice to gas fired generators on development and operating strategies including load balancing requirements
- Expert witness for litigation support
- Developed valuations for acquisition and divestiture of underground storage
- Assessed feasibility of new underground storage projects
- Developed natural gas supply, transportation and storage strategies, and risk analysis for new gas fired generators and industrial customers
- Evaluation of storage assets for acquisition/divestiture
- Site evaluation, permitting support for new generators
- Marketing support for new project development
- Strategic and development advice on new gas pipeline underground storage development
- Asset divestiture valuation and support
- Strategic support for new asset development
- Storage uses and strategic value of storage in North America for European client
- Support for landfill gas company to process gas and sell into Canadian marketplace

2003 Union Gas

- Marketing lead on a team to dispose of certain major capital assets
- Provided strategic regulatory support in the area of upstream transportation issues
- Provided marketing support for development of new products and services

1999 to 2002 Director, Business Development, Westcoast Energy

- Project Managed Westcoast's involvement in the development and construction of 2 major natural gas pipeline projects. Specific responsibilities included:
  - Project origination and commercial feasibility
  - Negotiation of all ownership and major development agreements

    - Company representative on partnership management committees
    - Responsibility to lead a team for the evaluation of a $175 million new pipeline project, including engineering design, marketing, regulatory approvals land acquisition, and environmental considerations
- Assessed commercial and technical feasibility to develop underground compressed air energy storage
- Commercial and technical lead on feasibility analysis of 2 new underground natural gas storage opportunities in Canada. Each project had an expected development cost of Cdn $100-150 million.
- Leadership of a technical and commercial team to identify feasibility of a storage opportunity in north Western Europe.
- Stakeholder and First Nations consultations

1993 to December 1998 Manager, Storage Business Development St. Clair Pipelines (Westcoast)

- Identified and managed the evaluation of potential storage projects in Michigan and New York States as well as other storage projects that supported Westcoast initiatives including projects in the Pacific Northwest area of the US, Alberta and the East Coast of Canada.
- Leadership of a multi-disciplinary team consisting of internal personnel and outside consultants to competitively bid and subsequently evaluate the conversion of 4 gas fields to underground storage in Australia. This included a full technical and commercial review, and development recommendations. These fields were developed and are currently in operation today based on the work completed.
- Managed the company's interests in a New York State based storage project and also recommended that the company exit the project when the development risks exceeded the corporate risk appetite.

1991 to 1993 Manager, Storage Business Developments Union Gas

- Led a team in evaluating commercial and technical aspects of new storage opportunities in Michigan and New York States, including developing "go/no-go" criteria, ownership structures and potential partners.

1987 to 1991 Manager Gas Purchasing, Union Gas

- Negotiated new and re-negotiated pricing and volume terms in existing gas supply and transportation contracts for up to 250 bcf annually (annual value over $500 million), resulting in reduced gas supply costs each year and defended the results before the Ontario Energy Board.
- Managed a commercial arbitration with one supplier resulting in a cost reduction of approximately $6 million annually.
- Instituted a new program to acquire competitive alternate supplies in an era when this had not been accomplished before.

1984 to 1987 Manager, Engineering Projects Analysis, Union Gas

- Project managed Union's interest in a large growth phase for expansion of storage and transportation activities
- Identified the potential, and managed the opening of a mothballed interconnect with a US pipeline. This resulted in significant new competitive opportunities and continued savings of gas supply costs.
- Developed the first Ontario based deregulated gas sales into the US.

1976 to 1984 Operation Management Roles Union Gas

- Held various management positions in Chatham, Hamilton and Halton Divisions
- Managed operating group of approximately 75 employees, including unionized staff.
- Managed pipeline, engineering and construction program.
- Successfully managed a new operating division for the company in Halton to create regionalized customer service and plant maintenance functions.

1974-1976 Engineering Roles Union Gas

- Various design responsibilities

ACADEMIC ACHIEVEMENTS

Masters of Business Administration, May 1984, McMaster University, Hamilton
Bachelor of Engineering (Civil), May 1974, McMaster University, Hamilton

Member of Professional Engineers of Ontario

Specific Projected Related Experience to Support Heritage Gas' Request for Consulting Support to Assist With the Transition to a Wholesale Market and Retail Competition in Nova Scotia

1. 1987-1991 Worked as Manager of Gas Purchasing for Union Gas to acquire all its supplies, and transition from an administered pricing system to system supporting wholesale competition. This included:
    - Renegotiating all contracts with TCPL to unbundle the transportation from the commodity. Note that this was at the leading edge of developing a competition started in Ontario
    - Negotiated new competitive long term contracts in this time period
    - Developed relationships with suppliers and transporters in the US to bring in new sources of discretionary supply to promote wholesale gas competition in Ontario
    - Supported these activities in front of the Ontario Energy Board.
    - Participated in or monitored the various regulatory and commercial process to facilitate the transition to retail competition in Ontario
2. 2005 Acted on Behalf of the Association of Power Producers of Ontario (APPrO) in the OEB sponsored Natural Gas Electricity Interface Review (NGEIR) process. The objective of the NGEIR process was to identify and negotiate the new services gas fired power generation customers would require to facilitate the short notice dispatchability of 5,000 MW of gas fired generation. APPrO successfully negotiated with TransCanada Pipelines, Union Gas and Enbridge Gas Distribution to offer new transportation, and balancing services to meet the short notice start up and shut down requirements of these new generators.
3. Actively participating on behalf of APPrO to restructure TransCanada's transportation rates from the current cost based model to a more competitive model that better supports wholesale competition. This includes working with marketers and other market participants to help ensure that their needs are understood and taken into account.
4. Acted on behalf of APPrO to negotiate and present evidence to the OEB to revise Union Gas' load balancing requirements for industrial and power generation customers.
5. Acted on behalf of APPrO in storage allocation hearing where a new approach was developed to allocate storage and balancing service among infranchise industrial customers.
6. Assessed various load balancing storage development opportunities in British Columbia, Alberta, Ontario, Nova Scotia and New Brunswick as well as various states in the United States, Australia and Europe. These required a detailed understanding of the local regulatory and commercial regime to determine if there were investment opportunities to participate in these markets.
7. Acted on behalf of a European asset operator to compare and contrast the commercial regime in various locations in Canada and the United States and determine how these could be applied in the European context.
8. Participated in various working committees for Vector Pipeline to develop new FERC related transportation and balancing tariffs.

9. Experience in developing and leading evidence in front of a variety of regulators
10. Significant storage related experience in the areas of market assessments, storage project development, service analysis and development, tariff development, and contract negotiation.