



**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.

**BEFORE:** Cathy Spoel  
Presiding Member

Paula Conboy  
Member

## **DECISION AND ORDER ON COST AWARDS**

### **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") 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"). CME, VECC, CCC and APPrO requested cost award eligibility.

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. In the Decision with Reasons, the Board found that CCC, CME and VECC would be eligible for cost awards. The Board also indicated that it will not rely on section 30 of the Act for costs. The Board 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.

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 accepted IGUA's submission with respect to cost eligibility and found it eligible to apply for its costs in this proceeding. Procedural Order No.5 also set out the process for eligible parties to file their cost claims for the period up to August 5, 2010 by September 24, 2010.

On October 1, 2010, APPrO filed a letter with the Board requesting that the Board reconsider and vary its decision on APPrO's cost eligibility. On October 22, 2010, the Board issued Decision and Procedural Order No.6 in which among other things, the

Board granted APPrO cost eligibility in this proceeding and set out the process for APPrO to file its cost claim for the period up to August 5, 2010 by November 5, 2010.

The Board received cost claims from CCC, CME, VECC, IGUA and APPrO.

### **Board Findings**

The Board has reviewed the claims filed by CCC, CME, VECC, IGUA and APPrO to ensure they were compliant with the Board's *Practice Direction on Cost Awards*. Due to a calculation error on the HST, the Board has adjusted CCC's cost claim. CCC's total revised claim is \$82,173.39.

The Board will therefore pay:

- Consumers Council of Canada \$82,173.39;
- Canadian Manufacturers & Exporters \$32,733.87;
- Vulnerable Energy Consumers Coalition \$4,572.57;
- Industrial Gas Users Association \$6,119.20; and
- Association of Power Producers of Ontario \$16,112.91.

**DATED** at Toronto, December 23, 2010.

### **ONTARIO ENERGY BOARD**

*Original signed by*

Kirsten Walli  
Board Secretary