

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
Télé.: (416) 326-4015
janet.minor@ontario.ca



BY E-MAIL and FAX (416) 440-7656

February 11, 2011

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

Dear Ms. Walli and Mr. Millar:

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 to Procedural Order No. 7

We write in order to request an Amendment to Procedural Order No. 7 ("Order") of the Ontario Energy Board ("Board") in this proceeding, pursuant to Rule 4.03 of the Board's Rules of Practice and Procedure. This request is being filed with the consent of the moving party on the Procedural Motion, the Consumer's Council of Canada ("CCC").

The Order pertains to the scheduling of the Procedural Motion wherein the CCC is seeking production of unredacted copies of the documents provided in response to questions taken under advisement during the cross-examination of the Attorney General's witness. The documents at issue include material provided to both the Minister of Energy, and the Cabinet of the Government of Ontario, that were redacted on the bases of solicitor-client privilege and irrelevance. Pursuant to the Order, responding materials on the Procedural Motion must be filed on or before February 14, 2011, and the motion is scheduled for argument on February 22, 2011.


Notwithstanding productive discussions with Mr. Robert Warren, counsel for the CCC, during the week of February 7, 2011, efforts to narrow the scope of the CCC's Procedural Motion have proven unsuccessful. As such, counsel for the Attorney General is presently seeking instructions respecting whether to assert an additional ground of privilege as a basis for refusing production. Obtaining such instructions requires the receipt of directions from very senior levels of

government given the nature of the documents at issue. We have communicated with Mr. Warren that obtaining such instructions will require an additional period of several weeks, and that following the receipt of instructions, the Attorney General may be required to file an additional affidavit. Mr. Warren has consented to an extension of time in order to permit counsel to obtain instructions, and file the relevant documentation, if necessary.

In the result, the Attorney General respectfully requests that the timetable listed in paragraphs 1 and 2 of the Order be vacated. Following the receipt of instructions, counsel for the Attorney General undertakes to promptly communicate with both Mr. Warren and the Board, regarding the exchange of materials, and the scheduling of the Procedural Motion. On behalf of the moving party, Mr. Warren consents to the Attorney General's proposal.

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 to vacate the timetable set out in paragraphs 1 and 2, pending further communication from counsel.

Yours very truly,



(A. Virani)

For: Janet E. Minor
General Counsel

JEM/av

cc: Robert Warren, Counsel for the Moving Parties, Consumer's Council of Canada &
Aubrey LeBlanc (by email)

All Intervenors (by email)