



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.

PROCEDURAL ORDER NO. 9

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") stating 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; Toronto Hydro Electric System Limited; Vulnerable Energy Consumers Coalition, Enbridge Gas Distribution Inc.; Union Gas Limited; and the Association of Power Producers of Ontario.

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.

On September 14, 2010, the Board issued Procedural Order No. 5 which among other things set out the next steps, and the timelines for the next steps, for this proceeding. On October 22, 2010, the Board issued its Decision and Procedural Order No. 6, which among other things extended certain timelines established in Procedural Order No. 5.

In accordance with Procedural Order No. 6, on November 5, 2010, counsel for the Attorney General of Ontario filed with the Board the affidavit of Mr. Barry Beale. On November 16, 2010, Mr. Beale was examined by counsel for CCC and by counsel for a number of other intervenors in the proceeding. During the examination of Mr. Beale, counsel for the Attorney General of Ontario took some questions under advisement.

On November 19, 2010, counsel for the CCC filed a letter with the Board in which it requested that the filing and argument dates established in Procedural Order No. 6 be revised and extended on account of certain outstanding undertaking responses.

By way of letter dated November 22, 2010, the Board vacated the filing and hearing dates established in Procedural Order No. 6.

On January 31, 2011, counsel for CCC filed a Notice of Motion (the "Procedural Motion") with the Board. The Procedural Motion was for the following orders of the Board:

1. An Order for the production of complete and unredacted copies of the documents provided in response to questions taken under advisement during the examination of Mr. Barry Beale on November 16, 2010, unredacted;
2. An Order compelling the re-attendance of Mr. Beale to answer further questions arising from the production of the unredacted documents referred to in paragraph 1; and
3. Such other and further relief as the CCC may request and the Board may grant.

On February 3, 2011, the Board issued Procedural Order No. 7 which set the dates for filing of responding materials on the Procedural Motion and the hearing of the Procedural Motion.

On February 11, 2011, after receiving a letter from counsel for the Attorney General of Ontario requesting an adjournment, the Board issued Procedural Order No. 8, which vacated the dates set in Procedural Order No. 7.

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 shall advise the Board and all parties to this proceeding of whether it intends to claim public interest privilege over the documents that are the subject of the Procedural Motion by March 25, 2011. If public interest privilege is claimed, this claim will be supported by an affidavit or other suitable documentation. If any party wishes to cross examine on this affidavit, they shall make arrangements with the Attorney General to do so, and file the transcripts from this examination with the Board and the other parties to this proceeding.
2. CCC shall file with the Board and serve on all other parties its written submissions with respect to the Procedural Motion by April 6, 2011.
3. Any party wishing to file responding materials, including the Attorney General, shall file such submissions with the Board and serve on all other parties by April 14, 2011.
4. The Board will hear oral argument on the Procedural Motion on April 21, 2011. The oral hearing will commence at 9:30 am in the Board's hearing room at 2300 Yonge St., 25th floor, Toronto, Ontario.

All filings to the Board must quote file number EB-2010-0184, be made through the Board's web portal at www.errr.ontarioenergyboard.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.ontarioenergyboard.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.

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.ontarioenergyboard.ca
E-mail: boardsec@ontarioenergyboard.ca

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

ISSUED at Toronto, February 28, 2011

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary