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**Ministère du  
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**BY E-MAIL**

August 9, 2011

Ms. Kirsten Walli, Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**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* ("Act")  
and Ontario Regulation 66/10**

**Board File No.: EB-2010-0184**

**Forthcoming Procedural Order re Scheduling of Hearing on the Merits**

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We are informed that prior to the upcoming hearing on the merits of the CCC's motion, Ontario Energy Board Staff ("Board Staff") will be making a written submission to the Ontario Energy Board ("Board") via external counsel who have been retained for this purpose. We are also informed that the position of Board Staff respecting the constitutionality of the impugned levy has yet to be determined, which in our view raises questions respecting the appropriate timing for the filing of the Board Staff's written submission. Under the current proposal, we are informed that Board Staff propose to file their written submission subsequent to the receipt of written arguments challenging the constitutionality of the impugned levy (to be filed by the CCC, and all other intervenors), but prior to the receipt of the Attorney General's written submission defending the constitutionality of the levy as an *intra vires* regulatory charge.

In our view, where Board Staff have yet to determine their position on the constitutionality of the impugned levy, it would be preferable if Board Staff had the opportunity to review and consider the written arguments both challenging and supporting constitutionality, prior to filing its written submission. Accordingly, we request that the forthcoming Procedural Order require that the written submission from

Board Staff be filed subsequent to receipt of the written submissions of both the CCC/intervenors supporting the motion, as well as the Attorney General of Ontario opposing the motion.

Please note that our concerns respecting the timing for delivery of written materials and allocation of oral argument were previously communicated via email from Mr. Robert Charney to Michael Millar dated July 28, 2011, copied to counsel for the CCC and the Canadian Manufacturers & Exporters.

Thank you for your consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Arif Virani', with a long, sweeping underline.

Arif Virani  
Counsel

encl.

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

All Intervenors (by email)

Mr. Michael Millar, Legal Counsel (Board Staff) (by email)