

John A.D. Vellone
T 416.367.6730
F 416.367.6749
jvellone@blg.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada M5H 4E3
T 416.367.6000
F 416.367.6749
blg.com



October 11, 2019

Delivered by Email, RESS & Courier

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street
27th Floor, Box 2319
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Application for Review of an Amendment to the Independent Electricity
 System Operator Market Rules
 Board File No. EB-2019-0242**

We are counsel to the **Kingston CoGen Limited Partnership** (“Kingston CoGen”) in the above-captioned matter. Please find attached Kingston CoGen’s Notice of Intervention in this proceeding. Paper copies of this letter and the accompanying Notice will be delivered to you by courier.

Should you have any questions or require further information in this regard, please do not hesitate to contact me.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A. D. Vellone

John A.D. Vellone

cc: John Windsor, Northland Power Inc.
Michael Lyle, IESO
Colin Anderson, AMPCO
Ian A. Mondrow, Gowling WLG

EB-2019-0242

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, as amended;

AND IN THE MATTER OF an Application by the Association of Major Power Consumers in Ontario, pursuant to section 33 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A and Rule 17 of the Ontario Energy Board *Rules of Practice and Procedure* for review of amendments to the Independent Electricity System Operator market rules related to the implementation of a Transitional Capacity Auction (MR- 00439-R00-R05).

AND IN THE MATTER OF a notice of motion by the Association of Major Power Consumers in Ontario, pursuant to section 33 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A and Rule 17 of the Ontario Energy Board *Rules of Practice and Procedure* to stay the operation of amendments to the Independent Electricity System Operator market rules pending determination of the Application.

**NOTICE OF INTERVENTION OF
KINGSTON COGEN LIMITED PARTNERSHIP
October 11, 2019**

Kingston CoGen Limited Partnership
c/o Northland Power Inc.
30 St Clair Ave W.
12th Floor
Toronto ON M4V 3A1

John Windsor
Tel: (647) 288-5558
Facsimile: (416) 962-6266
Email: NPITCA@northlandpower.com

General Counsel
Tel: (416) 962-6262
Facsimile: (416) 962-6266
Email: legal@northlandpower.com

Borden Ladner Gervais LLP
Bay Adelaide Centre, East
Tower 22 Adelaide St W.
Toronto ON M5H 4E3

John A.D. Vellone
Tel: (416) 367-6730
Facsimile: (416) 367-6749
Email: jvellone@blg.com

Gian P. Minichini
Tel: (416) 367-6738
Facsimile: (416) 367-6749
Email: gminichini@blg.com

INTRODUCTION:

1. On August 28, 2019, the Independent Electricity System Operator (“**IESO**”) board of directors approved market rule amendments for the implementation of a Transitional Capacity Auction (“**TCA**”) (MR-00439-R00-R05) (the “**Amendments**”).
2. The Amendments reflect an incremental evolution of the IESO Demand Response (“**DR**”) capacity auction, a program under which hourly DR resources and dispatchable loads (“**DR Resources**”) may provide DR capacity in exchange for availability payments.
3. The TCA increases the competition for capacity resources by opening participation in future capacity auctions to a subset of electricity generation resources, specifically off-contract dispatchable generation facilities, as well as DR Resources.
4. The Amendments were published on September 5, 2019 and are due to become effective October 15, 2019. The first TCA is currently scheduled to take place on December 4, 2019.
5. On September 26, 2019, the Association of Major Power Consumers in Ontario (“**AMPCO**”) (the “**Applicant**”) filed an application with the Ontario Energy Board (“**OEB**” or the “**Board**”) under section 33(4) of the *Electricity Act, 1998*, as amended, for review of the Amendments (the “**Application**”). AMPCO has also filed a notice of motion seeking an order from the Board to stay the operation of the Amendments pending the Board’s determination of the Application, pursuant to section 33(7) and 33(8) of the *Electricity Act, 1998* (the “**Stay Motion**”).
6. Kingston CoGen Limited Partnership, acting through its general partner, NPIF Kingston CoGen Corp. (“**Kingston CoGen**”) hereby requests intervenor status in the Application and the Stay Motion.

INTEREST OF THE INTERVENOR:

7. Kingston CoGen is an IESO market participant (MP ID 104300) with an OEB Electricity Generator license (EG-2003-0137). Kingston CoGen owns and operates the Kingston Generating Station, an off-contract dispatchable generation facility located in Kingston,

Ontario with a nominal capacity of approximately 110 MW. Kingston CoGen's power purchase agreement with Ontario Electricity Financial Corporation expired on January 31, 2017.

8. The Amendment would permit Kingston CoGen to compete in the upcoming TCA on December 4, 2019.
9. Through the Application and the Stay Motion, AMPCO seeks to restrict competition for capacity resources in Ontario by denying participation by off-contract dispatchable generation facilities.
10. This would directly harm Kingston CoGen by precluding it from pursuing opportunities to compete in the TCA, and if successful, to collect availability payments, and provide valuable capacity to the market.
11. Kingston CoGen has a direct and significant interest in this proceeding.

SCOPE OF PARTICIPATION:

12. Kingston CoGen intends to oppose the Application and the Stay Motion.
13. Kingston CoGen reserves the right to file evidence including expert evidence, submit interrogatories, cross-examine witnesses, advance argument, participate in any hearings, including the hearing on the Stay Motion, and to actively participate in all other aspects of the proceeding as circumstances may require.
14. Kingston CoGen agrees with the Applicant that the Application and Stay Motion be heard orally, as this would be the most efficient way to dispose of the matter. Kingston CoGen reserves the right to file evidence of harm, which is directly relevant to the Stay Motion.

COSTS:

15. Kingston CoGen recognizes that generators are not ordinarily eligible for a cost award under section 3.05 of the Board's Practice Direction on Cost Awards (the "**Cost Direction**").

16. However, pursuant to section 3.07 of the Cost Direction, notwithstanding section 3.05, the Board may, in special circumstances, find that a party which falls into one of the categories listed in section 3.05 is eligible for a cost award in a particular process.
17. In its Decision on Cost Eligibility and Procedural Order No. 6 in EB-2013-0010/EB-2013-0029,¹ the Board denied the applicant's cost claim in that Section 33 application, finding that they had represented their private interests (in that case, as generators) in that proceeding.
18. In this case, the Applicant is similarly representing the private interests of DR Resources and not the general interests of consumers more broadly. These DR Resources will compete directly with generators in respect of the upcoming TCA. It would be unjust and unreasonable to grant DR Resources cost eligibility in this proceeding while denying generation resources cost eligibility.
19. If the Board determines that AMPCO should be denied cost eligibility on the basis that they are representing the private interests of DR Resources and not the interests of consumers or the public interest more generally, Kingston CoGen concedes that it would also not be eligible for its costs for the same reason.
20. In the alternative, if the Board grants AMPCO cost eligibility in respect of this Application, Kingston CoGen submits that it should also be eligible for a cost award in light of special circumstances under Section 3.07 of the Cost Direction. Those special circumstances would be to ensure that one category of capacity resources (DR Resources) do not receive preferential treatment in this process over another competing category of capacity resources (electricity generators) – given that both resources are direct competitors in the upcoming TCA.

COUNSEL/REPRESENTATIVES

21. Kingston CoGen requests that the Board, the Applicant and all intervenors provide it and

¹ Decision on Cost Eligibility and Procedural Order No. 6, EB-2013-0010/EB-2013-0029, issued March 4, 2013 and as corrected on March 5, 2013: <http://www.rds.oeb.ca/HPECMWebDrawer/Record/385405/File/document>.

its counsel with copies of all written evidence and correspondence related to the proceeding, at the contact information below. Kingston CoGen asks that the Applicant deliver electronic copies of their Application and all other evidence to Borden Ladner Gervais LLP and Kingston CoGen at the coordinates listed below.

Kingston CoGen Limited Partnership

c/o Northland Power Inc.
30 St Clair Ave W.
12th Floor
Toronto ON M4V 3A1

John Windsor

Tel: (647) 288-5558
Facsimile: (416) 962-6266
Email: NPITCA@northlandpower.com

General Counsel

Tel: (647) 962-6262
Facsimile: (416) 962-6266
Email: legal@northlandpower.com

Borden Ladner Gervais LLP

Bay Adelaide Centre, East Tower
22 Adelaide St W.
Toronto ON M5H 4E3

John A.D. Vellone

Tel: (416) 367-6730
Facsimile: (416) 367-6749
Email: jvellone@blg.com

Gian P. Minichini

Tel: (416) 367-6738
Facsimile: (416) 367-6749
Email: gminichini@blg.com

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11TH DAY OF OCTOBER, 2019

BORDEN LADNER GERVAIS LLP

Per:

Original signed by John A. D. Vellone

John A.D. Vellone
Counsel to Kingston CoGen