

October 6, 2009

**Robert B. Warren**  
T: 416-947-5075  
rwarren@weirfoulds.com

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
Suite 2701  
2300 Yonge Street  
Toronto ON M4P 1E4

Dear Ms Walli:

**Re: EB-2008-0235**

We are counsel to the Consumers Council of Canada ("CCC"). We are responding to the "Intervenor Cost Submission Comments" (the "Comments"), which are attached to a letter, dated September 24, 2009, from Mr. Williamson, on behalf of London Hydro Inc. ("London").

In the Comments, London appears to object to the cost claim of the CCC based solely on a comparison of that claim with the cost claims filed by other intervenors. London's comparison is based on a number of calculations which, for the reasons set out below, we submit are artificial, and, therefore, unhelpful.

As the Board stated in its "Decision and Order on Cost Awards" in EB-2008-0227 dated August 6, 2009, "each application has its own unique circumstances and complexities of involvement by the specific intervenors". London filed approximately 1,900 pages of material, comprised of prefiled evidence and interrogatory responses, in support of its application. The CCC takes the position that all of that material had to be reviewed, in order to decide what positions to take on the application. Based on a review of all of that material, CCC determined what interrogatories it needed to file and what issues it needed to advance in argument. The fact that, having read all of the material, the CCC decided to file fewer interrogatories, and to take fewer positions in argument, than did the other intervenors, reflects, we submit, a responsible approach to the application. It is, we submit, unreasonable and unfair to criticize the CCC, or, indeed, any intervenor, because, having read the substantial volume of materials filed in support of an application, the intervenor decides to narrow the focus of its interests, and, therefore, the scope of its intervention.

Comparisons of the number of hours spent, the number of interrogatories filed, and the number of pages in written argument is, we submit, both artificial and unfair. That other intervenors may choose not to read all of the prefiled evidence, or to file more interrogatories, and to deliver

longer arguments, reflects their judgement of what their respective interests are in the circumstances. The fact that their judgement differs from that of the CCC should not be the basis for some invidious comparison.

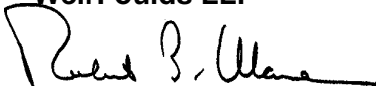
The CCC has made a policy decision to limit the number of LDC rate applications in which it intervenes. When it does intervene it is because it feels that the application, at least on its surface, requires detailed attention. The CCC does not apply some template to a large number of LDC applications. One result of that policy decision is that CCC's counsel and its consultant review all of the prefiled evidence, not on the basis of some pre-determined formula, but to see what components of the application warrant attention. Doing so may in some cases enlarge the scope of an intervention, and in others narrow it.

What is troubling about London's Comments is that they represent what appears to be a continuing attempt on the part of some LDCs to constrain intervenors by requiring that they all behave in exactly the same way. That is an attempt which the Board should resist.

We submit, therefore, that the argument advanced by London in its Comments should be rejected and the cost claim of the CCC be granted.

Yours very truly,

**WeirFoulds LLP**



Robert B. Warren

RBW/dh

cc: Dave Williamson, Chief Financial Officer  
London Hydro Inc.  
cc: Julie Girvan

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