

August 18, 2010

Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, Ontario M4P 1E4

Dear Ms. Walli,

Re: EB-2010-0245 - Objections To Cost Award Requests Received And Posted To-date.

As requested by the Board in its August 4th Notice to this consultation¹, Just Energy Ontario L.P. and Direct Energy (collectively the “Suppliers”) share similar views as presented in this submission and therefore have filed this position jointly. Both parties reserve their right to participate independently throughout the consultation.

The Suppliers have submitted, under separate cover, a request for reconsideration in the matter of the Board’s determination of parties from which cost awards will be recovered. Without prejudice to the above, should the Board require the payment of cost awards by Suppliers to any party in this consultation, the Suppliers provide the below comments and objections.

On August 4th, 2010 the Ontario Energy Board (the “Board”, “OEB”) issued a Notice announcing its intention to undertake a consultation under the above-referenced file number. The Notice directed that²:

*“The Board will determine eligibility for costs in accordance with its Practice Direction on Cost Awards. Any person intending to request an award of costs must file with the Board a written submission to that effect by **August 11, 2010**, identifying the nature of the person’s interest in this process and the grounds on which the person believes that they are eligible for an award of costs (addressing the Board’s cost eligibility criteria as set out in section 3 of the Board’s Practice Direction on Cost Awards). An explanation of any other funding to which the person has access must also be provided, as should the name and credentials of*

¹ OEB Notice Dated August 4, 2010; Appendix A

² OEB Notice Dated August 4, 2010; Appendix A; Section titled Cost Award Eligibility

*any lawyer, analyst or consultant that the person intends to retain, if known. All requests for cost eligibility will be posted on the Board's website. Licensed electricity retailers and licensed gas marketers will be provided with an opportunity to object to any of the requests for cost award eligibility. If a retailer or marketer has any objections to any of the requests for cost eligibility, such objections must be filed with the Board by **August 18, 2010**. Any objections will be posted on the Board's website. The Board will then make a final determination on the cost eligibility of the requesting participants."*

As of this date, the following eight (8) parties have submitted requests for cost award eligibility, as posted on the Board's website:

- Canadian Manufacturers & Exporters ("CME")
- Energy Probe Research Foundation ("Energy Probe")
- Building Owners and Managers Association of the Greater Toronto Area ("BOMA")
- London Property Management Association ("LPMA")
- Mr. Bruce Sharp
- Housing Help Association of Ontario ("HHAO")
- Consumers Council of Canada ("CCC")
- Vulnerable Energy Consumers Coalition ("VECC")

As reflected in the Notice issued by the Board, this consultation is specifically focused on the implementation of Part II and in small part, Part V of The *Energy Consumer Protection Act* ("ECPA") and does not extend to any other ECPA provisions³.

Part II of the ECPA only applies to gas marketing and electricity retailing to low-volume consumers⁴. In accordance with the Board's *Practice Direction on Cost Award (the "Direction")*, the burden of establishing eligibility lies with the requesting party⁵, and parties requesting such relief, must meet one or more of the criteria set out in section 3 of the *Direction*.

The Suppliers are supportive of participation from parties with thoughtful and relevant representation. Collaboration with these parties will inform the process and in our view, will lead to a more effective outcome for both low volume consumers and the retail market.

The Suppliers submit the following comments respectfully.

Parties with Commercial Interests:

The Suppliers object to the granting of cost awards for any participant representing a party with a commercial interest in this consultation. Section 3.05 of the *Direction* clearly prevents Suppliers, among other parties, from recovering costs in matters before the Board. The Suppliers submit, that at least in part, the rationale for this inability to recover costs is based in

³ OEB Notice Dated August 4, 2010, section titled "Overview of Consultation Process", para 2

⁴ Section 3 of the ECPA (Application), section 2 (see definition of a consumer) and clause 2&3 of the Draft Regulation prescribing volume thresholds.

⁵ Practice Direction on Cost Awards, section 3.02

the commercial interest of those parties. The suppliers object to the request for cost awards submitted by:

- CME
- BOMA
- LPMA

The Suppliers are of the view that the parties do not meet the criteria established under section 3 of the *Direction*, as it pertains to the subject matter of this consultation, and further, these parties do not represent low-volume consumers generally nor in our view, can provide any added material information or relevant subject matter expertise beyond those parties to which the Suppliers do not object (as noted further on in this submission).

The Suppliers request that these cost award requests be denied.

Energy Probe

The Suppliers object to the request made by Energy Probe. Although Energy probe is a well known and respected organization, its expertise and focus is not directed at the subject matter of this consultation, nor does it purport in its request for cost award, to have this expertise or any relevant significant experience dealing with consumers in this regard. Energy probe's submission provides a focus on energy efficiency and other more analytical or broader industry focus, which in our view will not provide any added benefit to the subject matter of this consultation.

The Suppliers request that Energy Probe's request for cost award be denied.

Organizations representing Low Volume Consumers

The Suppliers submit that this consultation will be enriched by the experience and participation of those agencies which have a wealth of first-hand knowledge in dealing with residential and low volume consumer interactions, as it pertains to energy supply. Those organizations are:

- HHAO
- CCC
- VECC

These three organizations provide such experience representing consumers across different constituencies, including our senior citizens, those in low income and unfortunate circumstances and everyday consumers.

Although it is encouraging to see all 3 request participation in this consultation; from a cost perspective, it is clear there is overlap across the organizations. The Suppliers are of the view that 2 organizations will provide more than enough representation in this matter and would ask the Board to consider this overlap of expertise as it determines the cost awards and choose the 2 most experienced organizations as determined by the Board.

Mr. Bruce Sharp

As noted in his request for cost awards, Mr. Sharp is self-represented. As a consultant, with a rich background in supply and wholesale matters, and retail experience with large volume consumers, the Suppliers do not believe that Mr. Sharp has met the criteria required for cost awards. As evidenced in his own request, his company has no interest in these matters as it is not relevant to his role; however he is, as is any other individual consumer in the province, able to participate or submit his views in the matter.

As it pertains to cost awards, the Suppliers submit that Mr. Sharp does not possess the experience and broad representation of consumers that the 3 organizations previously noted can contribute. The Suppliers submit that it is inefficient to pay costs for a single party in this matter.

Further, this would set a precedent that all consumers generally, should be individually compensated for participating in a Board consultation, even where they provide no subject matter expertise beyond what already exists.

The Suppliers, respectfully, do not believe that Mr. Sharp will be able to provide any additional expertise relevant to the subject matter of this consultation that warrants his approval of a cost award.

The Suppliers request that Mr. Sharp's request for cost award be denied.

Participant Funding

The Suppliers note that the Board has stipulated that a maximum of 40 hours will be eligible for cost recovery. Specifically, the Board states 40 hours " ...per eligible participant"⁶. The Suppliers request clarification of this statement. It is the Supplier view that this direction is interpreted to define a "participant" as the single entity or organization which has applied for cost award and is not to intended to apply to a "person", where an organization may have multiple people representing them in the consultation.

All of which is respectfully submitted.



Gord Potter
Executive Vice President
Just Energy

Original signed by
Gary Newcombe
Vice President
Direct Energy

⁶ OEB Notice Dated August 12, 2010 –Attachment G.