



Borden Ladner Gervais LLP
Lawyers • Patent & Trade-mark Agents
Scotia Plaza, 40 King Street West
Toronto, Ontario, Canada M5H 3Y4
tel.: (416) 367-6000 fax: (416) 367-6749
www.blgcanada.com

J. MARK RODGER
direct tel.: 416-367-6190
direct fax: 416-361-7088
e-mail:mrodger@blgcanada.com

Delivered by E-Mail & Courier

March 26, 2007

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

Dear Ms. Walli:

Re: In the Matter of Application by the Association of Major Power Consumers in Ontario (“AMPCO”) pursuant to Section 33 of the Electricity Act, 1998
OEB File No. EB-2007-0040

We are counsel to the Association of Major Power Consumers in Ontario (“AMPCO”) in the above-captioned matter. This letter addresses the following two matters:

- (a) The status and appropriate treatment by the Board of the materials filed by AMPCO, including the report prepared by Dr. Lawrence Murphy, AMPCO’s expert witness, entitled “Economic Aspects of the 3x Ramp Rate Decision”, which accompanies this letter; and
- (b) An apparent misunderstanding with IESO counsel as to our discussion last week with respect to the cancellation of the Technical Conference that had been scheduled for Thursday and Friday, March 22nd and 23rd.

The status and treatment of the AMPCO filings, including those accompanying this letter:

In Procedural Order No. 4 dated March 22nd, 2007, the Board ordered that AMPCO file with the Board and deliver to all parties its written submissions on the relevance of materials produced by the IESO, as well as the relevance of other materials as appropriate. AMPCO’s written submission of today’s date, which includes its submissions with respect to the matters identified in Procedural Order No. 4, is attached hereto (the “Filing on Relevance”).



BORDEN
LADNER
GERVAIS

We are also in receipt of correspondence dated March 23 from IESO's counsel. In that letter, Mr. Mark suggests that AMPCO's filings on February 9, 2007 (the Application & Summary of Application) and February 26 (Additional AMPCO Evidence & AMPCO Report on 3x Ramp Rate Market Rule Amendment) (collectively "AMPCO's Pre-Filed Evidence") are not evidence but "submissions only", "aside from the actual documents appended to them". AMPCO disagrees with this contention and seeks the Board's direction on this matter as described herein.

As indicated in our client's Application, the only mechanism available to AMPCO to have the Amendment reviewed by the Board was to initiate a proceeding as an applicant, in accordance with subsection 33(4) of the Act. This is not a typical proceeding in that AMPCO, as applicant, is relying almost entirely on documentation that it did not produce. The extent of that documentation was only known to the Board, AMPCO, and other parties last Tuesday afternoon (March 20th), when the IESO fulfilled its obligations to deliver materials pursuant to earlier Board orders.

AMPCO's Pre-Filed Evidence clearly articulates the facts that our client believes are relevant in order for the Board to discharge its obligations under the legislation. The Pre-Filed Evidence identifies and describes multiple themes on which AMPCO's witnesses will testify in the context of the collective materials produced and now before the Board.

The Pre-Filed Evidence was prepared under the direction of Mr. White with the assistance of Dr. Murphy and Mr. Clark. AMPCO submits that all of this material is evidence. AMPCO, and other parties, are entitled to refer to any part of the record before the Board as they deem appropriate. At the conclusion of the proceeding the Board will make the ultimate determination on questions of relevance and weight to be attributed to the evidence in deciding whether to revoke the Amendment or not.

AMPCO's Pre-Filed Evidence is not accompanied by affidavits sworn by AMPCO witnesses, consistent with the practice of the Board. No other party included supporting affidavits with their respective filings, including the IESO (with the exception of the affidavits concerning disclosure). Accordingly, other parties' filings are no different than AMPCO's Pre-Filed Evidence, including the 39 page summary provided by the IESO on March 9th. These materials constitute what we referred to in our March 22 correspondence as the "collective body of evidence" before the Board.

Consistent with past Board practice for oral proceedings, AMPCO's witnesses, Mr. White, Dr. Murphy and Mr. Clark, will adopt the Pre-Filed Evidence and the Filing on Relevance as their evidence for the hearing, except for statements that fall within the category of argument. Our expectation is that other parties and the IESO will pursue the same approach for their pre-filed materials.

Accordingly, AMPCO submits that it has provided the Board and parties with all evidence that reasonably could have been provided given the circumstances of this case:

- The Application filed February 9, the Additional Evidence filed February 26 and the Filing on Relevance submitted today provide a comprehensive and detailed summary of the facts that AMPCO relies upon and how the materials produced and which are now on the record relate to the facts;

- AMPCO witnesses will adopt this evidence respectively as their own for the oral phase of the hearing, and will be giving oral evidence at the hearing with respect thereto;
- Dr. Murphy will also adopt his report entitled “Economic Aspects of the 3x Ramp Rate Decision”, which accompanies this letter and the Filing on Relevance; and
- AMPCO’s witnesses will be made available for cross-examination following their oral testimony.

AMPCO submits that it has actually gone beyond what applicants typically provide prior to the commencement of a proceeding since the Filing on Relevance also essentially sets out the framework of AMPCO’s anticipated final argument. AMPCO’s case will not be a surprise to anyone, including the Board. Moreover, no party is prejudiced by the manner in which AMPCO has filed its Pre-Filed Material, the Filing on Relevance or Dr. Murphy’s Report.

Accordingly, AMPCO submits that it has met both the letter and the spirit of the Board’s Procedural Orders and the Rules of Practice and Procedure (the “Rules”), particularly in the unusual circumstances of this proceeding, in which AMPCO, although required to assume the role of Applicant, is in reality responding to the IESO’s Amendment.

We refer the Board to Rule 13 of its Rules, which provides as follows:

13. Written Evidence

13.01 Other than oral evidence given at the hearing, where a party intends to submit evidence, or is required to do so by the Board, the evidence shall be in writing and in a form approved by the Board.

13.02 The written evidence shall include a statement of the qualifications of the person who prepared the evidence or under whose direction or control the evidence was prepared.

13.03 Where a party is unable to submit written evidence as directed by the Board, the party shall:

- (a) file such written evidence as is available at that time;
- (b) identify the balance of the evidence to be filed; and
- (c) state when the balance of the evidence will be filed.

AMPCO has three comments in the context of Rule 13:

First, AMPCO filed its Application on February 9th, and its Additional Evidence on February 26th. No issue has been raised by the Board with respect to the sufficiency of AMPCO’s filings, or their compliance with the Board’s directions in this proceeding.

Second, for the IESO to suggest that these filings are not evidence places the form of a document over the substance contained in AMPCO’s Pre-Filed Evidence. The Pre-Filed Evidence represents summaries of the matters to which AMPCO’s witness panel will be testifying.



BORDEN
LADNER
GERVAIS

In any event, as noted above, AMPCO witnesses will adopt this evidence respectively as their own for the oral phase of the hearing, and will be giving oral evidence at the hearing with respect thereto.

Third, with respect to Dr. Murphy's report, we submit that it would not have been reasonable for Dr. Murphy to have prepared his commentary prior to this time, given the late date of the completion of the record. The IESO has been ordered to produce a significant volume of written material relating to the Amendment. For any party to complain because Dr. Murphy's commentary is being provided shortly after the IESO has completed its productions is simply inappropriate and unreasonable.

AMPCO has submitted its Pre-Filed evidence – the evidence that was available at the time. It will be filing the *curricula vitae* of its witness panel, all of whom are known to the Board. In our letter to the Board of Wednesday, March 21, 2007, we advised that while “AMPCO is still considering the 4 volumes of IESO materials received on Friday March 16 and the additional volume and affidavits received yesterday afternoon, AMPCO is considering providing parties with a short written commentary prepared by Dr. Lawrence Murphy”. AMPCO has therefore identified the balance of the evidence to be filed.

While AMPCO could not, as at the date of our March 21st letter, have known the precise scope of Dr. Murphy's commentary or when it would be filed, we are filing it as soon as possible after the IESO complied with the Board's directions as to its productions. We therefore request that the Board confirm that Dr. Murphy's commentary of today's date, entitled “Economic Aspects of the 3x Ramp Rate Decision”, shall be accepted and also considered to form part of AMPCO's written evidence in this proceeding.

In the event that the Board determines that Dr. Murphy's filing should, in order to have complied with previous Procedural Orders and notwithstanding the IESO's completion of its productions only days ago, have been provided at an earlier time, we ask that the Board exercise its authority under Rule 7 of its Rules of Practice and Procedure (the “Rules”), and extend the time limit for the filing of AMPCO's evidence in this proceeding in order to provide for the filing of this document at this time. We submit that such an extension is consistent with Rule 2.01 of the Board's Rules, which provides that “These Rules shall be liberally construed in the public interest to secure the most just, expeditious, and efficient determination on the merits of every proceeding before the Board.”

As all parties know, the Board is faced with a limited period of time in which to conduct its review of the Amendment and render its Decision. AMPCO seeks the Board's direction on these matter now rather than having valuable hearing time consumed by procedural matters at the commencement of the hearing later this week.

We therefore request that the Board confirm that AMPCO's Pre-Filed Evidence, the Filing on Relevance and Dr. Murphy's report, along with the intended approach of AMPCO witnesses adopting these materials as their evidence for the oral phase of the hearing, satisfies the Board's expectations and requirements of the Rules and Procedural Orders issued to date with respect to the filing of evidence.



BORDEN
LADNER
GERVAIS

Matters pertaining to the Technical Conference previously scheduled for March 21 and 22, 2007:

Finally, we feel it is necessary to respond to Mr. Mark's interpretation of our discussion with him last week in connection with the Technical Conference. From our perspective, there is a misunderstanding on components of our discussion which should be clarified.

1. I indicated my view to IESO counsel, and also to OEB counsel, that the typical technical conference process may not be appropriate for this proceeding. Our experience is that technical conferences are applicable to discovery in traditional rate-related cases. For example, technical conferences are very useful for topics such as examining load forecast details, examining the inputs relied upon to support capital plans, assumptions about comparable organizations used in compensation studies, etc. Our view is that these issues are very different to the matters before the Board in this proceeding.

I also volunteered that given the facts pertaining to the Amendment that I was contemplating a somewhat longer examination-in-chief for AMPCO witnesses and assumed that IESO may be considering the same.

I also referred counsel to Mr. Thiessen's March 16, 2007 email describing an expectation that parties make presentations summarizing their evidence in the proceeding. I indicated that it was not my intention to take AMPCO witnesses through a kind of summary evidence-in-chief at the Technical Conference. At no time did I indicate that an AMPCO witness panel would not be put forward or made available. If any party would have expressed a desire to ask AMPCO's witnesses questions in a Technical Conference context we certainly would have been pleased to comply with this request.

2. Mr. Mark is correct when he states that we did not intend to ask technical questions of IESO witnesses at the Technical Conference. My reasons were identical to those described above – the issues in this proceeding are different from a typical proceeding. However, this should not be interpreted by the Board as meaning that I have no questions for IESO. I fully intend to cross examine IESO witnesses as well as the witnesses called by other parties.
3. By cancelling the Technical Conference the intention was that no party would be limited to objecting to any further or new evidence.
4. I confirmed that while AMPCO had not prepared any other evidence pertaining to the Amendment other than what we had filed already, that we were considering having Dr. Murphy prepare an additional filing. Dr. Murphy's report is attached.



BORDEN
LADNER
GERVAIS

We regret if there has been any misunderstanding but trust that this will clarify AMPCO's position surrounding the cancellation of the Technical Conference.

Yours very truly,

BORDEN LADNER GERVAIS LLP

Original signed by J. Mark Rodger

J. Mark Rodger

encl.

copy to:

Ontario Energy Board (8 copies & diskette)

Adam White, President AMPCO

John LeMay, AMPCO Chairman

Martine Band, OEB counsel

Alan Mark, IESO counsel

Kelly Friedman, IESO counsel

All Intervenors to this Proceeding