



**EB-2009-0174**

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

**AND IN THE MATTER OF** an application by Ontario Power  
Generation Inc. pursuant to section 78.1 of the *Ontario  
Energy Board Act, 1998* for an order or orders determining  
payment amounts for the output of certain of the generating  
facilities.

**BEFORE:** Cynthia Chaplin  
Presiding Member

## **DECISION AND ORDER**

### **The Application**

Ontario Power Generation Inc. ("OPG") filed an application for an accounting order with the Ontario Energy Board (the "Board") on June 9, 2009, under section 78.1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15 (Schedule B). The Board assigned the application File No. EB-2009-0174.

On November 3, 2008, the Board issued its Decision with Reasons in OPG's payment amounts proceeding (EB-2007-0905) (the "payment amounts decision") which, among other things, approved certain variance and deferral accounts. On December 2, 2008, the Board issued a payment amounts order which described the treatment of approved variance and deferral accounts for a 21 month period ending December 31, 2009. The current application notes that OPG has deferred the filing of its next payment amounts application by one year and will apply for new payment amounts effective January 1, 2011. OPG states that it requires an accounting order to address the treatment of

deferral and variance accounts beginning on January 1, 2010. OPG seeks an order approving:

- the continuation of the amortization of the previously approved balances in certain nuclear deferral and variance accounts;
- the continuation of nuclear payment rider A;
- the establishment of a nuclear variance and deferral over/under recovery variance account; and
- the basis for recording entries in approved deferral and variance accounts after December 31, 2009.

### **The Proceeding**

On June 30, 2009, a Notice of Hearing and Procedural Order No. 1 was issued. The Board adopted as intervenors in this proceeding the intervenors and parties of record from the payment amounts proceeding. No other parties sought intervenor or observer status.

The Notice of Hearing and Procedural Order No.1 made provision for interrogatories, responses and submissions. In response to the procedural order, the Canadian Manufacturers & Exporters (“CME”) requested that a technical conference be scheduled following delivery of the interrogatory responses. The request was supported by Energy Probe Research Foundation (“Energy Probe”) and the School Energy Coalition (“SEC”). OPG responded on July 13, 2009 that the request was premature. In correspondence from the Board, parties were advised that the Board would determine whether further discovery, in the form of a technical conference or additional interrogatories, was required following the filing of responses. Board staff, CME and SEC filed interrogatories on July 24, 2009 and OPG filed responses on August 7, 2009. Certain of the interrogatories requested that OPG provide transactions and balances for the deferral and variance accounts. On August 17 and September 1, 2009, OPG filed updates to the transactions and balances for several nuclear variance accounts.

### **The Relevance of OPG’s Next Payment Amounts Application to this Accounting Order**

CME Interrogatory #1 (“CME IR#1”) focused on OPG’s decision not to file an application for new payment amounts effective January 1, 2010, and sought information on the “circumstances which prompted the decision, including the extent to which the current

payment amounts are estimated by OPG to be capable of supporting its estimated Hydroelectric and Nuclear Revenue Requirements for the 2010 calendar year ” OPG’s response, filed on August 7, 2009, stated that CME IR#1 was not relevant to the accounting order application and that the information was not required to resolve the current application.

On August 10, 2009, CME requested that the Board direct OPG to provide a response to CME IR#1. CME submitted that the information requested was relevant to a determination of whether any ratepayer protection conditions should be attached to the accounting order relief sought by OPG, namely an asymmetric Earnings Sharing Mechanism. SEC supported CME’s request stating that a response to CME IR#1 may end up answering any questions that may arise about the fairness of continuing existing payment amounts and protections. Energy Probe submitted that an oral hearing was required to canvass the issues brought forward by CME.

OPG responded on August 12, 2009, and submitted that the accounting order application is narrow and deals almost exclusively with deferral and variance accounts already approved by the Board. OPG referred to the Board’s payment amounts decision, noting that the establishment of deferral and variance accounts was not related to revenue requirement, whereas CME IR#1 is almost entirely related to the 2010 revenue requirement.

On August 17, 2009, CME filed correspondence quoting the news release for OPG’s 2009 Second Quarter Financial Results. CME stated that the net income impacts are a strong indicator that OPG is probably forecasting a significant revenue sufficiency for 2010. CME submitted that the financial results supported its request that the Board direct OPG to respond to CME IR#1.

In correspondence from the Board on August 18, 2009, parties were advised that the Board would not require OPG to answer CME IR#1 as the current proceeding is concerned with ongoing implementation of Board determinations relating to deferral and variance accounts and is not an examination of 2010 revenue requirement. The Board stated that the current payments amounts would remain in place until OPG files an application to change the payment amounts or as a result of the Board initiating a proceeding on its own motion to determine whether the payment amounts remain just and reasonable. The Board indicated that the process established in Procedural Order No. 1 would remain in place.

Accordingly, Board staff, CME, SEC and Energy Probe filed submissions on August 21, 2009 and OPG filed a reply argument on September 4, 2009.

### **The Recovery of Hydroelectric Variance Account Balances as Part of the Hydroelectric Payment Amount**

The payment amounts decision approved recovery of \$13.4 M related to two hydroelectric variance accounts. The approved recovery, which was included in the hydroelectric payment amount, ends on December 31, 2009. Board staff submitted that there will be over recovery related to these balances between January 1, 2010 and December 31, 2010. Board staff submitted that it would be appropriate to track the over collection of approximately \$8 M in a variance account for the purposes of future disposition. The submission was supported by Energy Probe. In its submission, OPG stated that it had no objection to separate tracking of any over/under recovery.

### **Board Findings**

The Board finds that it is appropriate to correct for any over-recovery of the Hydroelectric Variance Account balances and notes that OPG is not opposed to this approach. The Board approves the establishment of a variance account to record the over collection of hydroelectric variance account balances that are recovered through the hydroelectric payment amount. The approved account "Hydroelectric Deferral and Variance Over/Under Recovery Variance Account" will be used to record the over/under recoveries commencing on January 1, 2010.

### **Treatment of Deferral and Variance Accounts after December 31, 2009**

There were no submissions from parties explicitly related to continued amortization of the balances in the deferral and variance accounts, continuation of nuclear payment rider A, establishment of a nuclear variance and deferral over/under recovery variance account, or the basis for recording entries in approved deferral and variance accounts after December 31, 2009. Submissions from intervenors were concerned primarily with the status of OPG's current payment amounts during 2010. These submissions are addressed in the final section of this decision.

The payment amounts decision approved recovery of December 31, 2007 balances for seven deferral and variance accounts, with recovery periods of two, three or four years.

The hydroelectric variance account balances with two year recovery periods have already addressed in this decision. The payment amounts decision approved recovery of the account balances in the five other accounts through nuclear payment rider A. Appendix F of the payment amounts order states that nuclear payment rider A shall apply “to OPG’s nuclear production for the period December 1, 2008 to December 31, 2009”. OPG proposed the continuation of nuclear payment rider A beyond December 31, 2009, and the continued amortization and recovery of the approved December 31, 2007 balances in the following accounts:

- Ancillary Services Net Revenue Variance Account – Nuclear;
- Transmission Outages and Restrictions Variance Account;
- Pickering A Return to Service Variance Account;
- Nuclear Liability Deferral Account; and
- Nuclear Development Deferral Account, Transition.

OPG also requested a new account, a nuclear variance and deferral over/under recovery variance account, to capture the difference between forecast and actual production during the test period relating to nuclear payment rider A and rider C. OPG stated that the new account is in principle the same as the two other shortfall accounts the Board approved in the payments amounts decision. OPG explained that the account was not requested as part of the payment amounts application due to an oversight.

### **Board Findings**

The Board finds that it is appropriate to continue to recover the approved balances over the approved recovery periods and to do so through the continuation of nuclear payment rider A. The Board approves the continuation of nuclear payment rider A, and the continued amortization and recovery of the approved December 31, 2007 balances in the following accounts:

- Ancillary Services Net Revenue Variance Account – Nuclear;
- Transmission Outages and Restrictions Variance Account;
- Pickering A Return to Service Variance Account;
- Nuclear Liability Deferral Account; and
- Nuclear Development Deferral Account, Transition.

The Board also approves the request for a new variance and deferral over/under recovery variance account. The approved account is entitled “Nuclear Deferral and Variance Over/Under Recovery Variance Account”.

### **The Basis for Recording Entries in Approved Accounts**

The entries for the approved deferral and variance accounts are based on comparing actual costs or revenues to forecasts, with the exception of the Bruce Lease Net Revenues Variance Account. As a consequence of OPG deferring the filing of its next payment amounts application, OPG proposed, in the subject application, to use forecasts derived from 2008 and 2009 forecast values for the period after December 31, 2009 for the following accounts:

- Hydroelectric Ancillary Service Net Revenue Variance Account;
- Nuclear Ancillary Service Net Revenue Variance Account;
- Nuclear Development Variance Account; and
- Capacity Refurbishment Variance Account.

For the following accounts, OPG proposed specific treatment based on the same principles as used for the accounts listed above, namely applying the forecasts or methodologies underlying the current payment amounts:

- Hydroelectric Water Conditions Variance Account;
- Nuclear Liability Deferral Account;
- Nuclear Fuel Cost Variance Account; and
- Income and Other Taxes Variance Account.

The Bruce Lease Net Revenues Variance Account records the difference between the forecast costs and revenues related to the Bruce lease that are factored into the nuclear payment amounts and OPG’s actual revenues and costs. For the period after December 31, 2009, OPG proposed to measure the variance by comparing the actual Bruce lease net revenues credited to customers monthly through the current payment amounts to the actual net revenues realized by OPG on a GAAP basis. OPG proposed that the actual net revenues credited to consumers continue at the same rate of recovery approved for the 21 month test period in the payment amounts decision.

## **Board Findings**

The Board finds that the proposed treatment is acceptable. In each case, the entries will be derived using the same underlying forecasts and methodologies as were used to set the current payment amounts.

### **The Status of OPG's Current Payment Amounts**

CME submitted that based on OPG's 2009 second quarter financial results, "OPG may now be forecasting significant revenue sufficiencies for 2009 and 2010." In CME's view, OPG should, as a condition of the approval of this application, be obliged to account to its ratepayers in its next payments proceeding for the extent to which its 2010 earnings materially exceed the Board approved rate of return. CME noted that in prior proceedings involving gas utilities, the Board has imposed asymmetric obligations on utilities to account for possible over earnings. CME requested that a similar type of ratepayer safeguard order be made in this case.

SEC submitted that if the Board approves the application it is in effect approving the continuation of the existing payment amounts and indirectly providing a final determination regarding 2010 payment amounts. SEC submitted that the Board should grant the relief requested by OPG in this application, but declare the payment amounts to be interim commencing January 1, 2010.

In its response, OPG stated that the CME and SEC arguments were addressed by the Board's letter of August 18, 2009, and the purpose of the current application was to seek clarity on the technical application of the payment amounts order.

OPG noted that CME's reference to OPG's second quarter financial results compares 2009 results with 2008 and therefore cannot be used to assess whether OPG's 2009 earnings are above the Board approved level. OPG stated that the favourable impact on net income reported in the news release was a result of OPG's implementation of Board decisions on the tax loss variance account and the nuclear funds.

OPG reviewed the gas utility decision referred to by CME. In OPG's opinion, the earnings sharing mechanism implemented by the Board in that decision was due to a regulatory lag problem, a circumstance which does not arise in the current application

## Board Findings

The scope of the current proceeding does not include an examination of OPG's earnings in 2009 or 2010, and, therefore, the Board finds there is no reason to order an asymmetric earnings sharing mechanism as a condition of the Board's approval of this application. The case involving Enbridge Gas Distribution Inc., identified by CME, involved a general rates application that was abbreviated in nature in order to address regulatory lag. The Board finds that the circumstances in that case are in no way comparable to the current proceeding.

SEC has argued that if the Board approves the application it is indirectly providing a final determination regarding 2010 payment amounts. The Board does not agree. This proceeding is not an enquiry into OPG's 2010 revenue requirement. The Board's approval of this application does not preclude OPG from making an application later for new payments amounts for 2010; nor does it preclude the Board from initiating a proceeding on its own motion to determine payment amounts for 2010. It would only be in the context of either of those events that an order making OPG's payment amounts interim as of January 1, 2010, would be appropriate.

### THE BOARD ORDERS THAT:

1. OPG shall establish a variance account to be named the Hydroelectric Deferral and Variance Over/Under Recovery Variance account to be effective as of January 1, 2010;
2. OPG shall continue nuclear payment rider A beyond December 31, 2009, and the continued amortization and recovery of the approved December 31, 2007 balances in the following accounts:
  - Ancillary Services Net Revenue Variance Account – Nuclear;
  - Transmission Outages and Restrictions Variance Account;
  - Pickering A Return to Service Variance Account;
  - Nuclear Liability Deferral Account; and
  - Nuclear Development Deferral Account, Transition;
3. OPG shall establish a variance account to be named the Nuclear Deferral and Variance Over/Under Recovery Variance account to be effective as of April 1, 2008;

4. Intervenor eligible for cost awards shall file with the Board and forward to OPG their respective cost claims within 14 days of the date of this Decision;
5. OPG may file objections within 28 days of the date of this Decision. A copy of the objection must be filed with the Board and a copy must be forwarded to the party against whose claim the objection is being made;
6. Intervenor whose cost claims have been objected to may file with the Board and forward to OPG any responses to any objections for cost claims within 35 days of the date of this Decision; and
7. All filings to the Board must quote file number EB-2009-0174, be made through the Board's web portal at [www.errr.oeb.gov.on.ca](http://www.errr.oeb.gov.on.ca) , and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.oeb.gov.on.ca](http://www.oeb.gov.on.ca) . If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD or diskette in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ISSUED** at Toronto, October 6, 2009

**ONTARIO ENERGY BOARD**

*Original signed by*

John Pickernell  
Assistant Board Secretary