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(1934 - 2006)

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

Dear Ms. Walli

**Re: OPG Consultation on Next Prescribed Payment Amounts Application
– Staff Scoping Paper (EB-2009-0331)**

The Power Workers' Union ("PWU") represents a large portion of the employees working in Ontario's electricity industry. Attached please find a list of PWU employers.

The PWU is committed to participating in regulatory consultations and proceedings to contribute to the development of regulatory direction and policy that ensures ongoing service quality, reliability and safety at a reasonable price for Ontario customers. To this end, please find the PWU's comments on the *Board Staff Scoping Paper* that sets out subject areas and an initial list of issues that are likely to arise out of each subject area. The PWU has no comments on the *Revised Filing Guidelines*.

Yours very truly,

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Richard P. Stephenson

RPS:jr

List of PWU Employers

AMEC Nuclear Safety Solutions
Atomic Energy of Canada Limited (Chalk River Laboratories)
BPC District Energy Investments Limited Partnership
Brant County Power Incorporated
Brighton Beach Power Limited
Brookfield Power – Lake Superior Power
Brookfield Power – Mississagi Power Trust
Bruce Power Inc.
Capital Power Corporation Calstock Power Plant
Capital Power Corporation Kapuskasing Power Plant
Capital Power Corporation Nipigon Power Plant
Capital Power Corporation Tunis Power Plant
Coor Nuclear Services
Corporation of the City of Dryden – Dryden Municipal Telephone
Corporation of the County of Brant, The
Coulter Water Meter Service Inc.
CRU Solutions Inc.
Ecaliber (Canada)
Electrical Safety Authority
Erie Thames Services and Powerlines
ES Fox
Great Lakes Power Limited
Grimsby Power Incorporated
Halton Hills Hydro Inc.
Hydro One Inc.
Independent Electricity System Operator
Inergi LP
Innisfil Hydro Distribution Systems Limited
Kenora Hydro Electric Corporation Ltd.
Kincardine Cable TV Ltd.
Kinectrics Inc.
Kitchener-Wilmot Hydro Inc.
London Hydro Corporation
Middlesex Power Distribution Corporation
Milton Hydro Distribution Inc.
New Horizon System Solutions
Newmarket Hydro Ltd.
Norfolk Power Distribution Inc.
Nuclear Waste Management Organization
Ontario Power Generation Inc.
Orangeville Hydro Limited
Portlands Energy Centre
PowerStream
PUC Services
Sioux Lookout Hydro Inc.
Sodexo Canada Ltd.
TransAlta Energy Corporation - O.H.S.C. Ottawa
Vertex Customer Management (Canada) Limited
Whitby Hydro Energy Services Corporation

Board Staff Scoping Paper
Consultation on OPG's Payment Amounts Application
Comments of the Power Workers' Union

BACKGROUND

On September 24, 2009 the Ontario Energy Board (the "OEB" or "Board") initiated a consultation on the filing requirements for Ontario Power Generation's ("OPG") next payment amounts application and on the most efficient way of reviewing and testing the issues and evidence in the coming proceeding. To initiate discussions with stakeholders, Board staff has drafted a scoping paper (the "Scoping Paper") that identifies subject areas for review at the next proceeding on OPG's payment amounts and sets out issues likely to arise, and the evidence that will likely be filed. The Board's September 24, 2009 Notice states that it is the Board's expectation that this consultation will greatly reduce the time required to develop a formal Issues List during the proceeding. In addition the Board states that the discussions may assist OPG in preparing its application.

The Power Workers' Union's ("PWU") comments below are limited to the Scoping Paper.

PWU's GENERAL COMMENTS

From the discussions at the October 22, 2009 stakeholder meeting held by the Board for discussions on subject areas, proposed issues and revised filing

guidelines it is clear that OPG has yet to prepare its application for its next payment amounts.

The September 24, 2009 Board Notice states:

The scoping paper is not intended to limit OPG's ability to file information it feels is necessary to support its application, nor to restrict the ability of intervenors to comment on a formal Issues List, nor to supplement the filing guidelines.

The PWU therefore appreciates that while OPG, to the best of its ability, shared with stakeholders its current thinking on aspects of its next application the Board accepts that until OPG's next application has been filed and reviewed by parties, this consultation does not in anyway restrict OPG or intervenors' with regard to input on an Issues List in the proceeding on OPG's next application. In the PWU's view, some of the issues identified in the Scoping Paper are broad and while a focused Issues List that results from this consultation contributes to the efficiency of the next payment proceeding, for an efficient proceeding there will be the need to narrow down some of the issues based on the filed application.

PWU'S SPECIFIC COMMENTS

The following are the PWU's comments on specific sections of the Scoping Paper:

a. Proposed Procedural Steps

In the proposed procedural steps the Scoping Paper has the Intervenor and Board staff evidence filed before the Interrogatories ("IR") on the application. As the PWU noted at the stakeholder meeting, the IR process on the application should precede the filing of intervenor and Board staff evidence. Clarification provided in the IR process can help intervenors and Board Staff to determine the need to file evidence on a particular aspect of the application and will enhance the understanding of OPG's perspective on issues addressed in intervenor and Board staff evidence.

The proposed procedural steps include a second round of IRs, if necessary. The need for a second round of IRs should not be set out as an option as doing so is likely to predispose the proceeding to a second round of IRs. The option can take away from the efficiency of the first round of IRs as parties count on a second round.

b. Capital Structure and Cost of Capital

One of the proposed issues under return on equity (“ROE”) is as follows:

- ii) **Given that OPG has deferred the filing of its payment amounts application, are the payment amounts appropriate? Will OPG’s 2010 earnings exceed the Board approved rate of return?**

In the Board’s decision on OPG’s June 9, 2009 application for an accounting order, EB-2009-0174 the Board notes the following with regard to CME IR #1 in that proceeding [Page 2, Paragraph 4 to Page 3, Paragraph 5]:

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”...

....

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 PWU submits that including an issue on whether the payment amounts are appropriate given that OPG deferred the filing of its payment amounts application appears to be inconsistent, both with the views expressed in the Board's correspondence of August 18, 2009, and with generally accepted ratemaking practice and principles. Implicit in the proposed issue as written is that there is a possibility that OPG is "over earning" under the current payment amounts. Even assuming this were true, it is very difficult to understand how that fact would be in any way relevant to the establishment of the new payment amounts, and in particular, upon the level of the ROE which the Board should approve on a go forward basis. Therefore the PWU recommends that proposed issue (ii) under ROE be removed from the proposed Issues List.

All of which is submitted respectfully.