



**PUBLIC INTEREST ADVOCACY CENTRE**  
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**VIA FAX AND EMAIL**

Ms. Kirsten Walli  
Board Secretary  
P.O. Box 2319  
2300 Yonge St.  
Toronto, ON  
M4P 1E4

Dear Ms. Walli

**Re: Vulnerable Energy Consumers Coalition (VECC)  
EB-2009-0331 Consultation re: OPG Filing Guidelines and Issues List**

These are the comments of VECC with respect to

- a) the filing guidelines that should be imposed on OPG in its next application before the OEB, and
- b) the preliminary issues list distributed by the OEB staff.

As we do not, obviously, have OPG's actual filing, and OPG has not (nor would we expect it to have) finalized its views on several important issues going into the filing, VECC's comments are necessarily limited to the general expectations it has with respect to the filing of evidence and the structure of the issues.

**FILING GUIDELINES**

With respect to the material to be filed by OPG in support of its next filing, VECC would like to reiterate a point raised in the consultation held on October 22, 2009; the importance of including Board approved numbers in the filing.

Filing guideline 2.1.1 outlines the Key Planning Parameters imposed on OPG, which include the necessity to provide a minimum of 6 years of data, with an accompanying analysis of the variance between the budget and actual figures for each year.

OPG has two Board approved years, with some corresponding Board approved numbers in each. By way of specific example, page 31 of the Board's decision in EB-2007-0905 dated November 3, 2008 states:

Under these circumstances, the Board believes that a reasonable action is to disallow 10% of the Base OM&A costs of Pickering A. This represents a test period disallowance of \$14.9 million in 2008 and \$20.1 million in 2009. Even with those amounts removed from the revenue requirement, the amount of the operating costs of Pickering A will still remain well above those of other nuclear plants.

Accordingly for 2008 and 2009, with respect to the OM&A costs of Pickering A, there are board approved costs for 2008 and 2009 that are

- a) clearly below what was requested in the Application,
- b) may be different than what was ultimately in OPG's budget for those years, and
- c) may be different than the actual figures for those years.

VECC agrees with the proposition in the consultative discussion that understanding how OPG incorporated the board approved figures into its budget going forward, and why there may be variances in the actual figures relative to those board approved figures provides important historical context for the test year application.<sup>1</sup>

VECC understands that, to some extent, OPG intends to provide some analysis of the Board approved figures relative to their budgeted and actual figures. In doing so, VECC submits, it is important that the analysis is done at the same level of detail as in the Board decision. For example, in the case of the Pickering A OM&A costs, the Board decision specifies a 2009 reduction of \$20.1 million; the evidence relating to the 2009 variance from board approved should be specific to the Pickering A OM&A costs and the achievement of (or failure to achieve) a level of Pickering A OM&A specific costs that match the Board's decision, as opposed to, for example, treating the Board approved reduction at the level of total nuclear OM&A or total OM&A including nuclear and hydroelectric assets.

VECC acknowledges that it may be the case that OPG made decisions that, for example, maintained the Pickering A OM&A costs at their 2009 applied for level, and obtained some or all of the required \$20.1 million reduction in other areas of spending. If that is the case, however, the

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<sup>1</sup> VECC acknowledges that, for example, the Board approved 2008 numbers will likely vary from the budgeted and actual numbers for 2008 as a result of OPG having received the Board approved numbers in late 2008. VECC does submit, however, that it is important for OPG to describe the effect, if any, the Board approved numbers for 2008 and the variance from those numbers had on OPG's planning process going forward into 2009 and beyond.

reasons for doing so should be described explicitly in the pre-filed evidence.

## **ISSUES LIST**

### **GENERAL**

VECC would like to reiterate a general observation on the framing of the issues that it made at the October 22, 2009 consultation, namely the “leading” nature of the some of the issues as originally drafted. VECC recognizes that generally speaking there are no conflicts with respect to actual “openness” of the issues list in most cases despite such wording, however in VECC’s view there is utility in trying to properly describe the true breadth of a sub-issue in the issues list.

Ultimately the issue to be decided by the Board is simply put:

What is an appropriate payment amounts order for OPG?

In VECC’s view the identification and framing of the sub-issues that, taken as a whole, allow the Board to come to an ultimate conclusion about an appropriate payment amounts order should not be clouded by wording that suggests predetermination about what constitute appropriateness for any particular issue.

For example, proposed issues 2 b) i) is:

- i) Has OPG complied with the Board’s direction in EB-2009-0084 (or retained the existing formula)? If not, is the proposed alternative ROE appropriate?

VECC would agree that in order to have an issues list that is useful to the Board in coming to a decision on the issue of an appropriate payment amounts order it is necessary to subdivide the components of such an order into sub-issues; VECC further agrees that the concept of an appropriate ROE is a useful subdivision of the issues that recognizes that in coming to a conclusion about an appropriate payment amounts order the Board will have to consider the return that OPG should be given the opportunity to earn on its equity.

However, unless there is some binding statutory requirement about how ROE is to be a) determined and b) incorporated into a payment amount, neither of which VECC believes to be true, it is misleading to frame the ROE issues in terms of specific possibilities; doing so suggests that the Board has three options in resolving the issue,

- a) enforcing a Board direction in EB-2009-0084, when there may not be a direction forthcoming that is binding on the Board in determining payment amounts for OPG,
- b) enforcing the formula accepted in the previous payment amounts proceeding, although that proceeding is not binding, or
- c) allowing the use of an alternative ROE formula if proposed by OPG?

In VECC's view the issue is clearly a simpler one:

What is an appropriate ROE for OPG?

VECC recognizes that the answer may be:

- a) an ROE that is determined by a methodology created by the Board in EB-2009-0084,
- b) an ROE that is determined by the methodology used to determine OPG's existing ROE, or
- c) an ROE that is determined by a different methodology as presented by the applicant.

However, in addition, the answer may be an ROE determined by a methodology grounded in intervenor evidence, another jurisdiction, a methodology crafted by the presiding panel based on all the evidence before it, or a methodology that originates from any of the methodologies above that, additionally, accounts for other factors, including, for example, any overearnings achieved in 2010 as a result of the deferral of the payment amounts application.<sup>2</sup>

VECC believes that the above described "openness" of the actual issues before the Board is generally accepted in any event. VECC's simple point is that the issues list is most useful when the urge to specify a range of expected outcomes within the issue itself is avoided.

Thank you.

Yours truly,

Michael Buonaguro  
Counsel for VECC

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<sup>2</sup> This possibility is considered, VECC believes, in proposed issue 2 b) ii)