

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

AND IN THE MATTER OF a consultation to determine the filing requirements and most efficient means to review the issues in Ontario Power Generation Inc.'s next application to the Ontario Energy Board to determine payment amounts under Section 78.1 of the *Ontario Energy Board Act, 1998*.

**RESPONSE OF ONTARIO POWER GENERATION INC. TO BOARD STAFF'S
SEPTEMBER 24, 2009 SCOPING PAPER AND DRAFT FILING
REQUIREMENTS**

Ontario Power Generation Inc. ("OPG") submits the following comments in response to Board staff's September 24, 2009 Scoping Paper and staff's proposed changes to the Filing Guidelines. OPG supports the OEB's goal of a focused and efficient hearing of its next payment amounts application and submits these comments to help advance that goal. To keep the development of the application on track, OPG urges the OEB to finalize any revisions to the Filing Guidelines in November, as per the schedule issued on September 24, 2009. This timing will allow OPG to prepare its application and file it by the end of the first quarter of 2010. Adherence to this schedule is necessary to allow the OEB the time required to review OPG's application¹ and establish payment amounts to be effective January 1, 2011.

OPG has begun the process of developing the information necessary to prepare its application. As part of this process it will determine the regulatory methodologies and approaches that it will propose. OPG expects that these will be, in general, as presented by Board staff. In certain instances, however, OPG may propose alternative approaches.

These comments are organized in two sections. The first section discusses Board staff's Scoping Paper. The second section addresses the draft revisions to the filing guidelines presented in the Proposed Guidelines.

¹ Filing at the end of Q1 2010 will allow the application to include a full year of 2009 data.

STAFF SCOPING PAPER

Proposed Procedural Steps

OPG believes that the proposed approach in the Scoping Paper (page 2) of having the intervenors and Board staff file evidence before the submission of interrogatories to OPG is unworkable and will reduce, rather than enhance, the efficiency of the proceeding. The proposed approach is impractical because both staff and intervenors will likely require information from OPG in preparing their evidence and will use interrogatories to obtain this information. If staff and intervenors are required to file evidence before the receipt of interrogatory responses, the likely result is that they will seek to file supplemental evidence once they receive responses to their interrogatories. The potential need for a supplemental round of staff/intervenor evidence can be eliminated by following the OEB's traditional practice of having these parties file their evidence after they receive responses to their interrogatories.

The Proposed Procedural Steps also include "a second round of interrogatories, if necessary." If by a second round of interrogatories, Board staff is referring to the OEB's usual practice of allowing parties to ask questions on staff/intervenor evidence, then OPG has no issue with this proposal.

If, however, staff is proposing that parties who have already had an opportunity to fully question OPG on its application be given a second opportunity to ask questions, then OPG strongly objects to this proposal as both unnecessary and inefficient. The proposal is unnecessary because the schedule does not contemplate the applicant filing any additional evidence between the first and second round of questions. Given that parties already have had a chance to ask any relevant questions in the initial round of interrogatories, OPG does not see any purpose in allowing a second round of questions. Moreover, holding out the prospect of a second round of questions is likely to dilute the effort spent on developing the first-round questions with the result that questions that could have and should have been asked initially will be deferred to the second round.

As the OEB is well aware, responding to interrogatories is an extremely time consuming and costly exercise for applicants. In the last payment amounts proceeding, OPG received 550 interrogatories, which, including subparts constituted more than 1,500 individual questions. Each one of these questions needed to be logged, referred to a

knowledgeable respondent, answered, reviewed and formatted for distribution. This process took thousands of person hours and involved dozens of individuals from OPG's prescribed nuclear and hydroelectric facilities and central office functions. The completed responses contained thousands of pages of material which filled six large binders.

Having OPG respond to a second round of interrogatories while it is preparing for the hearing is neither practical nor efficient. The OEB should follow its usual practice of having staff and intervenors file their evidence after they receive responses to their interrogatories on applicant's evidence and then allowing a second round of interrogatories only on staff/intervenor evidence.

Rather than a second round of interrogatories to OPG, OPG supports the use of a Technical Conference, if necessary, to clarify any remaining questions after interrogatory responses have been filed. OPG believes a Technical Conference is most effective when questions are submitted in advance so that it can ensure it has the appropriate people available at the Technical Conference to respond to the questions.

Capital Structure

The Scoping Paper states:

“OPG will file documentation supporting the debt to equity ratio for the test period and a detailed explanation for any deviation from an equity ratio of 47%. If an equity ratio of 47% is maintained for the test period, a focused examination of capital structure is anticipated.” (Scoping Paper, page 3)

The 47% equity ratio approved by the OEB in the last proceeding and used to develop the payment amounts is based on a deemed, rather than an actual capital structure (EB-2007-0905, Decision with Reasons, page 150). OPG intends to continue basing its filing on a deemed capital structure containing an equity ratio of 47% and thus does not see any need to file explanatory material for any deviation from the deemed structure used to develop rates.

Return on Equity

The Scoping Paper (page 4) proposes the following issue: “Given that OPG has deferred the filing of its payment amounts application, are the payment amounts appropriate? Will OPG’s 2010 earnings exceed the OEB approved rate of return?” This is not an appropriate issue for the 2011-2012 test period payment amounts proceeding because it does not relate to the period that will be the subject of the OEB’s review. The OEB addressed the question of OPG’s 2010 earnings in its Decision and Order in EB-2009-0174, OPG’s accounting order application. The OEB highlighted the fact that the proceeding was not an inquiry into the 2010 revenue requirement. Similarly, OPG’s upcoming application is not an inquiry into the 2010 revenue requirement; rather it will seek approval of the 2011-2012 revenue requirement.

OPG’s application will include forecast information for 2010 which can inform this question. However, the data to definitively determine this question will not be available until February 2011 when OPG finalizes its 2010 information. This will be after the OEB is scheduled to complete its review and establish new payment amounts.

Capital Projects

Hydroelectric

The Scoping Paper (page 5) proposes the following issue: “Were the Niagara Tunnel costs in excess of those approved by the OPG Board of Directors prudently incurred?” OPG has developed a revised schedule for completion of this project that has it coming into service at the end of 2013. As the project’s in-service date will not occur within the 2011-12 test period, this issue will not be ripe for decision in the up-coming proceeding. It should be deferred until the in-service date for the project is within the test period of the application.

OPG plans to include capital expenditures on the Niagara Tunnel Project in its regulated hydroelectric capital budget for the test period and will include an explanation of the work associated with these expenditures and the status of the project. This evidence is consistent with the evidence provided for all major capital projects.

Nuclear

The Scoping Paper (page 6) proposes the following issue: “Are the proposed test period nuclear capital expenditures appropriate and supported by business case summaries?” The reference to business case summaries should be deleted from the statement of the issue. The filing guidelines propose that business case summaries be provided only for projects greater than \$10 million; a proposal that OPG supports. If a business case summary for a project over \$10 million is not available because the project is in the project identification or initiation phase, OPG will support its proposed expenditure with a project description.

In the EB-2007-0905 proceeding, OPG filed business case summaries for nuclear projects greater than \$10 million in response to hearing undertaking J6.1. There were 38 projects in the nuclear portfolio that had been released and were greater than \$10 million and the business case summaries for these projects (excluding those for nuclear security projects which were not filed due to confidentiality) totaled 536 pages. This amount of material in itself is voluminous and it is impractical to require business case summaries for projects of a lower value.

Nuclear Refurbishment and New Build

The Scoping Paper (page 7) also makes reference to supporting refurbishment and new build expenditures with business case summaries. OPG will provide business case summaries if they are available. OPG does not expect to have a business case summary for new build expenditures and may not have business case summaries for Pickering B and/or Darlington refurbishment at the time of its filing. If business case summaries are not available, OPG will support its proposed expenditures with project descriptions. The reference to business case summaries should be removed from proposed issue ii) on page 7 of the Board staff Scoping Paper.

Nuclear Operating Costs

The Scoping Paper (page 10) states: “OPG will likely file updated benchmarking studies, including EUCG, WANO, Navigant, and salary surveys, as directed, as well as a discussion of results and trends.” This does not accurately reflect the OEB’s Decision in EB-2007-0905. There, the OEB explicitly stated that OPG need not retain Navigant to

conduct the additional benchmarking and made no mention of benchmarking nuclear salaries.

OPG will file additional benchmarking as directed by the OEB in its Decision in EB-2007-0905. This benchmarking uses WANO measures and EUCG data, but this benchmarking is not being done by Navigant. OPG intends to include information on nuclear costs in this benchmarking, but it does not include any nuclear-specific salary benchmarking. Salary evidence will continue to be filed that relates to OPG as a whole.

The proposed issue “Are the 2008 and 2009 human resources related costs (wages, salaries, benefits, incentive payments, FTEs and pension costs) appropriate?” (Scoping Paper, page 10) should be changed to reflect the anticipated test years, (2011 and 2012) and moved into the corporate cost section which relates to OPG’s overall compensation.

Other Revenues

The Scoping Paper (page 13) suggests that OPG will file evidence on Congestion Management Settlement Credits (“CMSC”) and includes CMSC as an issue under other revenues. In EB-2007-0905 the issue of whether CMSC constituted other revenues was fully reviewed. The OEB agreed with OPG’s position that CMSC do not represent net revenues, but rather are compensation for the costs OPG incurs when its prescribed facilities are constrained on or off due to market or system conditions beyond its control (Decision with Reasons, pages 50 and 129). Given this determination, there is no reason for OPG to file information on forecast CMSC and no reason to include CMSC in the discussion of other revenues.

Nuclear Waste Management and Decommissioning, Nuclear Liabilities

O. Reg. 53/05 section 6(2) 8 requires that “The Board shall ensure that Ontario Power Generation Inc. recovers the revenue requirement impact of its nuclear decommissioning liability arising from the current approved reference plan.” Thus the issue as OPG sees it is whether the method adopted by the OEB in EB-2007-0905 will allow OPG to recover the costs of its nuclear liabilities. The issue proposed in the Scoping Paper (page 14) “Is the forecast of unfunded liabilities reasonable,” is too

narrowly framed. The issue should be recast as: “Is the revenue requirement impact of the nuclear liabilities appropriately determined?”

Proposed Filing Guidelines

OPG offers the following comments on staff’s proposed changes to the filing guidelines (“Proposed Guidelines”). In its first Application, OPG submitted comprehensive and well organized evidence in support of its application. In developing the current application, OPG seeks to build on the lessons learned in the first proceeding to improve its filing.

Proposed Exhibits

OPG believes that the exhibit structure in the Proposed Guidelines (page 7) can be streamlined to improve the efficiency of the OEB’s review. Rather than the 11 Exhibits suggested in the Proposed Guidelines, OPG proposes to file the following nine Exhibits:

- A - Administrative
- B – Rate Base
- C – Cost of Capital and Capital Structure
- D – Capital Projects
- E – Production Forecast
- F – Operating Costs
- G – Other Revenues
- H – Deferral and Variance Accounts
- I – Determination of Payment Amounts

The major differences between OPG’s intended exhibits and those in the Proposed Guidelines are:

- 1) Exhibit C - Cost of Capital and Capital Structure will include a discussion of nuclear liabilities as a separate tab in Exhibit C as this issue is very much related to the composition of rate base and capital structure as illustrated in EB-2007-0905 Payment Amounts Order Tables 4b and 5b. This results in the elimination of Exhibit H in the Proposed Guidelines.

- 2) Exhibit E - Production Forecast will include a separate tab discussing the hydroelectric incentive mechanism because of the relationship between the implementation of the mechanism and forecasting.
- 3) Exhibit G - Other Revenues will not include a tab on energy revenue because variances in energy revenues are solely attributable to variances in production and this information is already included in Exhibit E - Production Forecast. Repeating it here would only be duplicative and, potentially, confusing.
- 4) OPG proposes that changes to the design of the payment amounts, if any, be rolled-in to Exhibit I and so there is no need for Exhibit L in the Proposed Guidelines. As stated above, the review of the hydroelectric incentive mechanism required by the Decision in EB-2007-0905 will be included in Exhibit E.

Key Planning Parameters

OPG does not believe that staff's proposal to add a third year of historical data (2007) in this proceeding would be helpful or efficient (Proposed Guidelines, page 8). The two years of historical data (2008 and 2009) address the entire period since April 1, 2008 when OPG became subject to OEB regulation. In addition, the inclusion of a third year will complicate the development of OPG's exhibits by requiring the addition of another year's data to each table. This will also make the tables harder to read because the text will need to be sized to accommodate presentation of six years of data (2007 through 2012 inclusive). In addition, the volume of the filing will be increased considerably with another set of variance explanations and reports such as audited financial statements and rating agency reports.

The Proposed Guidelines (page 8) also state: "For the Bridge Year, a budget to forecast comparison should be provided." Such a comparison would not be meaningful for OPG because in the 2010 bridge year OPG's budget is the same as its forecast and there are no OEB approved figures for 2010 because that year was not part of the test period in OPG's previous application.

The Proposed Guidelines request "Audited prescribed generation facilities financial statements for each of the Historic Years and Bridge Year." This requirement goes beyond the requirements established by the OEB's Decision in EB 2007-0905, which

only requires OPG to file one set of audited financial statements for the prescribed facilities covering the last year before the application is filed (EB 2007-0905 Decision with Reasons, pages 171-72). Moreover, only one set of statements will be available – 2009 with 2008 comparators, because the requirement for separate audited financial statements for the prescribed facilities was not articulated by the OEB until the end of 2008. Thus it was not until 2009 that OPG began tracking this information separately for the prescribed facilities and reconstructing comparators for 2008. There is no value in going back to create separate financial statements for years before OPG was directed to prepare them. We have not gathered the information and many assumptions would be required. In addition, separate audited financial statements cannot be created for the bridge year since the results will not yet be available until after this application has been decided.

Capital Projects

The Table on page 14 of the Proposed Guidelines should be revised to reflect the fact that business case summaries are required for projects over \$10 million consistent with OEB direction (see Proposed Guidelines, page 6).

Taxes

The OEB's direction with respect to the tax information that OPG is required to file is set out in the OEB's decision in EB 2007-0905 and paraphrased in the Proposed Guidelines (page 6). The Proposed Guidelines (page 17) state: "OPG is required to file extensive information in its Historical, Bridge and Test year forecast of income tax and the detailed calculation supporting the data." There is no need to characterize this information as "extensive." The appropriate test is whether OPG has met the OEB's direction, not whether the information filed is "extensive."

Operating Revenues

The information on energy revenues in the Proposed Guidelines (page 17, section 2.8.1) is unnecessary. OPG is not like a distribution company with multiple rate classes each paying a different rate. OPG has one rate for its hydroelectric output and another for its nuclear output. It will file both its production forecasts and its historical production by technology. Any variance in energy revenues by technology is solely attributable to

variances in production and these variances will be addressed in the production forecast exhibit. With respect to the revenues associated with the hydro incentive mechanism, they also will be considered in conjunction with the production forecast. Avoiding the need to duplicate the presentation of this information, which is already found in other exhibits, will help to streamline the application.

Design of Payment Amounts

The Exhibit L contained in the Proposed Guidelines (page 18) is not required. OPG proposes that changes to the design of the payment amounts, if any, be rolled-in to Exhibit I. The analysis of the hydroelectric incentive mechanism to determine if it maximizes the efficient use of the existing generating facilities is best considered in conjunction with the hydroelectric production forecast because of the many common elements between these two items. Should a need emerge to discuss any other proposed design issues, they can be considered in conjunction with the determination of payment amounts.