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By electronic filing and by e-mail

December 7, 2010

Kirsten Walli, Board Secretary
Ontario Energy Board
27th floor – 2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms Walli,

Ontario Power Generation Inc. ("OPG") 2011-2012 Payment Amounts Application
Board File No.: EB-2010-0008
Our File No.: 339583-000064

In the rush to get our Argument filed before midnight yesterday, we failed to catch a few typographical errors. They are as follows:

- Table of Contents – item XI. Design Payment Amounts should read "Design of Payment Amounts
- Page 11, para.42, line 2 – delete the last word "transmission"
- Page 25, para.91, line 2 – there should be a comma after the word "number"; line 6, the phrase "what the Board's suggesting in its …" should read "what the Board is suggesting, in its …"; line 8, there should be a comma after the word "Ontario"
- Page 26, para.94, line 3 – the word "any" should read "the"
- Page 34, para.121, last line – the word "unlikely" should read "likely"
- Page 34, para.122, line 3 – the phrase "economic feasibility" should read "economic feasibility analysis"
- Page 48, para.174, 4th last line – the word "access" should read "assets"
- Page 53, the topic heading "Design Payment Amounts" should read "Design of Payment Amounts"
- Page 63, para.235, the introductory words "The summary" should read "In summary,"
- Page 63, para.236, line 4, the phrase "we support the submission" should read "we submit"

We attach a corrected version of the document.

Yours very truly,

Peter C.P. Thompson, Q.C.
PCT\slc
enclosure
c. Barbara Reuber (OPG)
Intervenors EB-2010-0008
Paul Clipsham
OTT01\4301019\1

EB-2010-0008

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 its generating facilities.

CORRECTED
ARGUMENT OF
CANADIAN MANUFACTURERS & EXPORTERS ("CME")

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TABLE OF CONTENTS

I. OVERVIEW

1. Ontario Power Generation Inc. ("OPG") asks the Board to approve revenue requirement amounts of $1,435.7M for hydroelectric and $5,473M for nuclear for the two-year test period between January 1, 2011 and December 31, 2012. These revenue requirements and resulting payment amounts of $37.38 per MWh for hydroelectric and $53.34 per MWh for nuclear are proposed to become effective March 1, 2011.

2. In addition, OPG asks the Board to approve various debit and credit deferral account balances having a net credit amount for hydroelectric of $45.8M and a net debit balance for nuclear of $692.5M. OPG seeks to clear the entire credit balance for hydroelectric and $459.9M of the $692.5M of nuclear debit balances recorded in deferral accounts over 22 months, commencing March 1, 2010. The remainder of some $232.6M is proposed to be recovered in the 24 months between April 1, 2012 and March 31, 2014.

3. Over and above these sums, OPG asks the Board to approve a deferral account for collection in years beyond the test period for estimated test period pension/OPEB cost increases of $264.2M.

4. We estimate that if all of the amounts OPG asks the Board to approve were recovered during the 24-month test period, then the percentage increase over the status quo payment and rider amounts for hydroelectric and nuclear would be materially more than the 9.6% reflected in the presentation OPG made to Stakeholders in the Spring of 2010. OPG's proposal recovers some $500M of proposed deferral account balances in periods beyond the test period, which reduces the requested recoveries in the test period to a 6% increase over the status quo. The approach of postponing some $500M of recoveries for collection in years following the test period does not represent any cost reductions. It just masks the reality of the enormity of OPG's claims.

5. The significant increases embedded in OPG's application are even more startling if one considers that the proposed nuclear revenue requirement reflects a $197.1M

reduction that is not the result of any cost constraint measures, but is merely the accounting result on nuclear liabilities on the decision to refurbish Darlington. Mr. Shepherd for the Schools Energy Coalition ("SEC") makes this point in the draft of his argument that we have reviewed. Mr. Shepherd calculates that the real measure of cost increases embedded in OPG's application, derived by taking existing payment amounts and rider amounts for hydro and nuclear, respectively, and comparing them to the hydroelectric and nuclear payment amount and matters that would ensue if all costs being claimed by OPG were recovered during the course of the test period, would exceed 20%, if one recognizes that the $197.1M revenue requirement reduction attributable to the Darlington refurbishment decision does not represent any real cost reductions.

6. OPG seeks these significant increases at a time when consumers are experiencing and facing very significant year over year increases in their electricity bills.

7. Safe, reliable and cost effective ownership and operation of OPG's regulated assets is critical to Ontario electricity consumers and the viability of the Ontario economy because OPG uses its regulated assets to supply about 48% of total Ontario electricity demand.[1] Conversely, the viability of OPG and the Ontario economy is very much dependent on the ability of all Ontario electricity consumers to cope with the steep electricity price increase environment in which they find themselves.

8. In these circumstances, we would expect that those responsible for developing OPG's business and spending plans would be particularly sensitive to the adverse effect electricity price increases are having on consumers. To our dismay, any sensitivity of that nature is conspicuous by its absence. Those managing OPG tell us

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[1] See OPG's Argument-in-Chief, p. 1.

that the total bill impacts on consumers do not need to be, and are not, considered in OPG's planning process.[2]

9. Moreover, we are told the electricity price increases that consumers are experiencing are irrelevant to the Board's consideration of OPG's application. OPG argues that the Board would be acting illegally if it takes the total electricity price environment facing consumers into account when assessing the reasonableness of OPG's spending plans. As far as OPG is concerned, the only thing that matters is the cost of their needs. OPG's position is that if it has a need, then the Board is obliged to allow it to recover the reasonable costs of satisfying that need in its regulated rates. According to OPG, the Board is only permitted to consider the impact of their increased needs on total electricity bills when assessing the reasonableness of OPG's spending plans. We are told that it would be both unfair and a legal error for the Board to disallow any portion of OPG's spending plans to reflect effects on total electricity bills not caused by OPG.[3]

10. This astonishingly myopic view of utility regulation is incompatible with the express provisions of the *Ontario Energy Board Act, 1998* (the "*OEB Act*")[4] which require the Board to exercise its rate-making responsibilities in a manner that protects consumers with respect to electricity prices. OPG's position is also contrary to prior Board decisions and a recent Ontario Court of Appeal decision.[5]

11. The only evidence filed in this proceeding that describes the price increase environment electricity consumers are facing and experiencing is the analysis provided

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[2] Transcript, Volume 15, p. 13.

[3] OPG's Argument-in-Chief, p. 5.

[4] *Ontario Energy Board Act, 1998*, S.O. 1998, Chapter 15, Schedule B, as amended.

[5] See *Toronto Hydro-Electric System Limited v. Ontario Energy Board*, ONCA 284 at para. 50 [leave to the Supreme Court of Canada denied]; and Hydro One Distribution, EB-2009-0096, Decision with Reasons, April 9, 2010, p. 13.

by Bruce Sharp of Agent Energy Advisors at the request of CME.[6] Based on his analysis, Mr. Sharp concluded that over the next five years, non-residential electricity consumers could expect to see their total unit costs rise by between 47% and 64% over the increase already experienced in 2010. This is equivalent to an average annual compounded increase of 8.0% to 10.0%.[7]

12. Mr. Sharp concluded that residential consumers would likely see their total unit costs rise between 38% and 47% over the next five years, which translates into an average annual compounded increase of between 6.7% and 8.0% over the significant increase already experienced in 2010.[8] Most electricity consumers have already experienced a 15% to 20% increase in their total bills in 2010. The typical monthly residential consumer bill as of June 27, 2008 was $111.63.[9] Less than two years later, on February 5, 2010, that same customer's bill increased to $133.08.[10] This represents an increase of 19.2%.

13. The credibility of Mr. Sharp's estimates is reinforced by the price projections contained in the government's recently published Long-Term Energy Plan ("LTEP").[11] The government forecasts that residential customers are facing a 47% increase over the next five years. The government's industrial price projections, which may only be a subset of the consumers Mr. Sharp classifies as non-residential, shows total unit prices increasing from about $80 per MWh to about $112 per MWh over the next five years for an overall increase of about 53% in the next five years.[12]

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[6] Exhibit M, Tab 5, Schedule 1

[7] Exhibit M, Tab 5, Schedule 1, p. 7.

[8] Exhibit M, Tab 5, Schedule 1, p. 8.

[9] Exhibit K9.5, Tab 14.

[10] Undertaking J14.6, Attachment 1.

[11] Exhibit K16.3.

[12] Exhibit K16.3, p. 59.

14. Manufacturing is a core component of Ontario's economy. For manufacturers, Ontario's electricity prices are now greater than the electricity prices available to their competitors in other jurisdictions. A large proportion of manufacturers represented by CME are "price takers". If care is not taken in managing the year over year increases in electricity prices, then these manufacturers will likely leave Ontario.

15. The government's recently announced Ontario Clean Energy Benefit ("OCEB") does little, if anything, to alleviate the electricity price increase pressures facing Ontario manufacturers. CME estimates that between 75% and 85% of its members are too large to qualify for the OCEB, and too small to qualify for benefits the government has made available to help large industrial consumers cope.

16. The government's Background Papers announcing the introduction of the OCEB states that:

> **"The province's revenues from its ownership of Ontario Power Generation and Hydro One are projected to be approximately the same as the cost of the OCEB."**[13]

17. It is unfortunate that the government chose to allocate the return and related tax that it receives from OPG and Ontario Hydro in the manner that it did, because the effect is to deprive those electricity consumers who neither qualify for the OCEB nor the programs that benefit large industrials of any electricity price relief. Had the government simply chosen to waive its recovery of some or all of its return and related taxes being recovered from OPG and Hydro One in their regulated rates, and concurrently challenged the municipally owned utilities to do the same, then electricity pricing relief would flow to all electricity consumers through their Board-regulated rates. Manufacturers and others ineligible for either the OCEB or the programs for large industrials would not find themselves so disadvantaged. The government's failure to

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[13] *Ontario Economic Outlook and Fiscal Review 2010*, p. 15
(http://www.fin.gov.on.ca/en/budget/fallstatement/2010/paper_all.pdf)

adopt an equitable allocation approach of the type that the Board applies when it establishes utility rates leaves the bulk of Ontario manufacturers facing electricity price increases of between 47% and 64% over the next five years.

18. We urge the Board to be acutely aware of the situation facing manufacturers and others who do not qualify for either the OCEB or electricity costs saving programs available to large industrials when it evaluates the overall reasonableness of the revenue requirement and deferral account amounts OPG seeks to recover.

19. We further urge the Board to accord a very high priority to its electricity price protection mandate when scrutinizing OPG's application. The Board's power to respond to the significant price increase environment facing consumers currently and over the next five years is far broader than OPG postulates. The range of available regulatory responses includes one or more of the following:

(a) reducing Operation Maintenance and Administration (OM&A) expenses for 2011 and 2012;

(b) reducing rate base expenditures for 2011 and 2012; and/or

(c) reducing Equity Return and Related taxes in 2011 and 2012 to the extent that system safety and integrity is not compromised;

(d) limiting the recovery of deferral account balances to amounts that are compatible with the principles and circumstances that gave rise to the creation of those accounts.

20. We submit that the Board in exercising its rate-making responsibilities in a manner that accords a high priority to consumer protection against price increases is empowered to impose any measure that the utility itself might take without compromising safety or reliability.

21. For the reasons that follow, OPG's application should not be approved as filed. The revenue requirement amounts and deferral account balances that the Board permits OPG to recover should be materially lower than the amounts OPG asks the Board to approve.

II. CONTEXT AND GUIDING PRINCIPLES

22. We submit that matters relevant to the determination of the questions contained in the Issues List include the items described in the paragraphs that follow:

A. <u>Significantly Increasing Electricity Prices</u>

23. As noted earlier, before the government's announcement of the OCEB, the evidence in this proceeding indicated that the non-residential electricity consumers could expect to see their total unit costs rise by between 47% and 64% over the increase already experienced in 2010, ranging between a 15% to 20% increase in total bills. For residential customers, electricity prices were estimated to increase between 38% and 47% over the five-year planning horizon used by OPG, a level of increase that equated to an average annual compound increase of between 6.7% and 8.0% over the increases already experienced in 2010.

24. While the government has recently announced OCEB alleviates electricity pressures facing residential and small consumers, it does nothing to alleviate the electricity price increases facing Ontario manufacturers and others too large to qualify for the OCEB and too small to qualify for the benefits the government has provided to help large industrial consumers cope with significantly increasing electricity prices. The government's failure to provide electricity price increase relief to all electricity consumers leaves the bulk of Ontario manufacturers facing electricity price increases of between 47% and 64% over the next five years.

25. We submit that the overall electricity price increases consumers are facing and will likely face over the course of OPG's five-year planning cycle are a critical consideration when determining the overall reasonableness of the revenue requirement

amounts and deferral account balances OPG asks the Board to approve for 2011 and 2012. We submit that when exercising its rate-making jurisdiction under the *OEB Act*, in the midst of a period of very significant electricity price increases, the Board should accord a high priority to its statutory objective of protecting consumers with respect to electricity price increases.

26. The need to consider overall bill impacts was emphasized by the Board in its April 9, 2010 Decision with Reasons in EB-2009-0096, being Hydro One's application for approval of 2010 and 2011 distribution rates. In the Decision, the Board expressly acknowledged that:

> **"In giving effect to the Board's objective to protect the interests of consumers the Board cannot ignore the overall impacts on customers."**

27. The Decision also states that:

> **"[...] the Board must take into account the overall increase and prospect of further increases in the commodity portion of the bill. While these charges are outside of the control of the applicant, they are no less real for customers."**[14]

28. Mr. Sharp's evidence, containing estimates of the 2010 electricity price increases consumers are experiencing, and the level of electricity price increases consumers will likely experience over the balance of OPG's planning cycle, is evidence pertaining to the "overall increase and prospect of further increases in the commodity portion of the bill." His evidence is precisely the type of evidence that the Decision states cannot be ignored.

29. The bill impact evidence submitted by OPG does not reflect the total impacts of all of the factors that prompt OPG's five-year business plans from which its spending plans for 2011 and 2012 are derived. Only the evidence by Mr. Sharp addresses the overall impacts on customers. The Board's statutory objective to protect the interest of

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[14] EB-2009-0096 Decision with Reasons dated April 9, 2010, p. 13.