



EB-2013-0326

IN THE MATTER OF Sections 25.20 and 25.21 of the
Electricity Act, 1998;

AND IN THE MATTER OF a Submission by the Ontario
Power Authority to the Ontario Energy Board for the review
of its proposed expenditure and revenue requirements and
the fees which it proposes for the year 2014.

Before: Christine Long
Presiding Member

Cathy Spoel
Member

DECISION AND ORDER

November 6, 2014

This decision concerns the Ontario Energy Board's (the "Board") review of the Ontario Power Authority's (the "OPA") proposed 2014 expenditure and revenue requirement and fees. The OPA submitted its proposal to recover its operating budget of \$60.3 million on March 6, 2014. This budget is based on the OPA's 2014-2016 Business Plan which was approved by the Minister of Energy ("Minister") on January 29, 2014 in accordance with section 25.22(3) of the Electricity Act.

To recover its operating budget the OPA proposed to charge a usage fee of \$0.439/MWh, an increase of \$0.001 from the 2014 interim approved fee of \$0.438/MWh, and a reduction of \$0.112/MWh from its 2013 approved usage fee of \$0.551/MWh.

The OPA proposed to hold its other fees, for registrations and applications constant. In its original submission, in addition to its request for approval of its operating revenue, expenditures and fees, the OPA requested the Board's approval of:

- its proposal to refund amounts in the Forecast Variance Deferral Account ("FVDA") in excess of \$5.0 million;
- establishment of the 2014 FVDA, the 2014 Government Procurement Costs Deferral Account ("GPCDA"), and the 2014 Registration Fees Deferral Account ("RFDA"), and
- continuation of such further or other deferral accounts as the Board may deem appropriate.

The OPA sought to retain \$5 million in the FVDA to address unexpected operating costs. The purpose of the FVDA is to record over or under collection of fees compared to the OPA's actual expenditures. The accumulated balance in the FDVA as at December 31, 2013 is \$33.8 million. This amount is a credit to fee payers.

In July 17, 2014, the Minister announced that the merger of the Independent Electricity System Operator ("IESO") and the OPA would proceed on January 1, 2015.

On August 29, 2014, the OPA filed a revised submission in which it sought approval to retain \$15.0 million in the FVDA. The reason for the increase was to allow for the payment of costs associated with the merger.

Intervenors in the Proceeding

The Board granted intervenor status to the IESO and Shell Energy North America (Canada) Inc. ("Shell").

The Board granted intervenor status and cost eligibility to Association of Major Power Consumers in Ontario ("AMPCO"), Building Owners and Managers Association ("BOMA"), Canadian Manufactures and Exporters ("CME"), Energy Probe Research Foundation ("Energy Probe"), School Energy Coalition ("SEC") and the Vulnerable Energy Consumers Coalition (VECC).

The Proceeding

Settlement conferences were held both prior to and following the OPA's revised submission but no settlement was reached.

An oral hearing was held on September 18, 2014. The Board heard evidence from a panel of OPA witnesses and submissions from the OPA. The Board heard intervenor and Board staff submissions and the OPA's reply argument on October 7, 2014.

The Board's decision is organized into four topics:

1. Operating Budget and Usage Fee
2. Forecast Variance Deferral Account
3. Metrics and Performance
4. Stakeholder Engagement

1. Operating Budget and Usage Fee

None of the intervenors nor Board staff objected to the OPA's proposed fees or operating budget. The operating budget was based on the 2014-2016 Business Plan for the fiscal year 2014 and has been accepted by the Minister pursuant to s. 25.22(3) of the Act.

Board Findings

The Board approves the 2014 operating budget of \$60.3 million dollars and the Board approves the requested usage fee of \$0.439/MWh and the fees requested by the OPA, which are set out below in the "Board Orders" section to this decision.

The Board observes that in making this decision, its only options are to approve the submission of the OPA, or to return it with recommendations. There is nothing in the record of this proceeding which provides any grounds which would support returning the submission to the OPA.

2. Forecast Variance Deferral Account (“FVDA”)

The OPA’s FVDA was established to record variances between the revenues collected as usage fees, based on a forecast of costs and expected consumption of power, and the OPA’s actual costs. At the end of December 2013, the FVDA balance was \$33.8 million due to collection of fees in excess of costs for several years. The OPA proposed to return a portion of that surplus to fee payers. Originally the OPA proposed to retain \$5 million to cover unexpected costs in 2014. This was increased to \$15 million following the merger announcement. The reason for the increase was to fund costs of the OPA and IESO merger that are out of the ordinary course of business.

Neither the IESO nor Shell participated actively in the hearing. The other intervenors argued that the Board should not approve the OPA’s request to retain \$15 million, but should require the OPA to refund all but \$5 million as originally proposed or that no amount should be retained and that the entire amount should be refunded.¹

Two issues were raised concerning the disposition of the FDVA balance:

- a. What is the extent of the Board’s authority to decide what amount should be cleared?
- b. If the Board has the authority to clear the FVDA what is the appropriate amount to clear?

The Board’s Jurisdiction

Board staff argued that the Board does not have the jurisdiction to approve the original proposal (a clearance of all but \$5 million in the FVDA Account) but must consider only the revised submission. The Board must accept it, or return the application to the OPA for further consideration with the Board’s recommendations.² In support of this argument, Board staff relied on section 25.21 of the Act which states:

Board’s powers

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board’s recommendations.

¹ EB-2013-0326, Oral Hearing Volume 3 (October 7, 2014), page 4 (SEC), page 36 (BOMA), page 53 (CME), pages. 71-72 (Energy Probe) and page 86 (VECC).

² Ibid. page 87.

Board Staff's argument was that the disposition of the balance in a deferral account as requested by the OPA is part of the "proposed requirements and proposed fees" and therefore must be approved by the Board as presented by the OPA or not at all. Just as the Board cannot substitute its view of an appropriate revenue requirement, it cannot substitute or vary the amount sought to be cleared from the FVDA.

The Board does not agree with Board Staff's interpretation of this section. The Board accepts the argument of SEC and finds that it has the authority to order the clearance of any amount in the deferral account that seems appropriate. The OPA did not disagree with SEC on this point.³

The FVDA was created by the Board to record differences between the approved and actual OPA expenditures and fees, not as a component of them. This deferral account is no different in principle from any other approved by the Board. The Board dealt with a similar situation in the IESO Fiscal 2011 Fees Submission.⁴

Unlike the OPA's budget which must be approved by the Minister, the clearance of a deferral account does not depend on such approval as a precondition. If it did, then the only possible Minister's approval is that which was issued in January 2014, when the proposal was to retain \$5 million. The revised submission has not been approved by the Minister. In the Board's view that is immaterial as the budget has not changed.

The OPA's evidence was that it requires the use of the \$15 million to be retained in the FVDA to fund costs related to the merger with the IESO. There are as yet no estimates of these costs or any detail as to what those costs will cover. The OPA also proposes to have costs incurred by both the IESO and the OPA paid out of these funds, both prior to and following the January 1, 2015, merger date. Alternative sources of funding for merger costs appear to involve borrowing to the extent they can't be paid out of ongoing operating expenses.

All Intervenors and Board staff also submitted that there needs to be appropriate tracking and allocation of merger costs between the OPA and the IESO.⁵ They also took the position that only the OPA's costs can be paid from the FVDA.⁶

3 Ibid. page 8.

4 EB-2010-0046, April 25, 2011

5 Ibid. page 24 (SEC), pages 30-33 (BOMA), pages 55-57 (CME and AMPCO), pages 72-73 (Energy Probe), page 86 (VECC), pages 93-94 (Board staff).

6 Ibid. page 9 (SEC), page 30 (BOMA), pages 55-56 (CME and AMPCO), page 67 (Energy Probe), page 85 (VECC), pages 98-99 (Board staff).

Board Findings

The Board will allow the OPA to retain \$5.0 million in the FVDA as contemplated in the OPA's original submission. The OPA shall refund the balance to fee payers.

The FVDA was created to track the difference between expenses and revenues. The surplus accrued to December 2013 dates back to 2011. The surplus represents over-collection of revenues in excess of the budgeted amount caused by the fact there has been no change to the OPA fee to reflect lower costs over those years.

The OPA submitted that the requested amount in the FVDA should not be cleared and returned to fee payers because the funds are required by the OPA for the purpose of carrying out its objects (i.e., the merger with the IESO).⁷ The Board does not consider this to be a persuasive argument in favour of leaving a large balance in the FVDA. Some balance is appropriate to cover variations from the amounts budgeted to implement the approved Business Plan. The Board finds that the use of these funds as a source of financing for merger costs, which are beyond reasonable variations from the OPA's submission based on its Business Plan, is beyond the scope of this account.

Retaining a balance of \$5 million was contemplated in the OPA's 2014-16 Business Plan which was approved by the Minister who stated in his January 29, 2014 letter:

"In addition, I am encouraged that the OPA intends to rebate approximately \$25 million of its cumulative surplus to ratepayers and that a lower interim usage fee in the amount of \$0.438 /KWh has already been approved by the Ontario Energy Board.

...

I am now able to approve the OPA's 2014-16 Business Plan for the purposes of the Electricity Act, 1998."

At the time, the FVDA balance was approximately \$30 million, so a rebate to fee payers of approximately \$25 million would have left a balance of \$5 million.

While the OPA's evidence is that it will not likely need a contingency amount for 2014 operations, the Board recognizes that there may be some variance between revenue and expenses to the end of 2014 and that retaining a balance of \$5 million in the FVDA is reasonable to cover any shortfalls that may occur.

⁷ Ibid page 109.

The OPA was unable to provide concrete examples of its anticipated merger costs. The Board does not agree with the OPA's proposal to use extra funds in the FDVA for merger costs which would be tracked and subject to a review at a later date for reasonableness. Given that the OPA and IESO have some distinct classes of fee payers, the tracking of the expenses and appropriate allocation seems to add a layer of complexity that is unwarranted, particularly since the OPA does not yet have a precise proposal as to how it intends to accomplish this task. It is also not at all clear to the Board what remedy there would be if the costs are eventually found not to be reasonable.

The FVDA surplus amount should be paid back to fee payers and the costs for the merger should, if necessary, be applied for as part of a future revenue requirement submission.

The Board does agree with the OPA that fee smoothing is an appropriate consideration and that using the FDVA funds may achieve that result. However, in weighing this consideration against the competing principle of minimizing intergenerational inequity, the Board finds that it is more reasonable to refund the overpayment from prior years to ratepayers as soon as possible.

Metrics and Performance and Stakeholder Engagement

The Board notes that it is not within the Board's authority to impose conditions on the OPA with respect to performance metrics and stakeholder engagement. The Board can only make recommendations.

3. Metrics and Performance

The OPA's 2014-2016 Business Plan notes that "In 2011, the Ontario Energy Board directed the OPA to develop a more complete and informative set of performance and efficiency metrics."⁸

⁸ EB-2013-0326, Exhibit A-2-1, Page 37 of 40.

In response to this direction, the OPA undertook to develop efficiency metrics by retaining an external consultant and conducting a stakeholder session with intervenors. However, the OPA's 2014-2016 Business Plan states that "the development of a final set of metrics was put on hold in 2012 as the OPA focused resources on merger and integration activities. The OPA now looks forward to continuing to build on the metrics development work completed to date."⁹

The OPA presented proposed metrics for the 2011 to 2013 period and targets for the 2014 fiscal year. The OPA submitted that the metrics reveal a trend that it was delivering on its mandate with improved efficiency in contract management and in the procurement of energy savings and generation.

Board staff and some intervenors had concerns regarding the OPA's performance and efficiency metrics. Some parties submitted that the OPA's metrics continue to be inadequate for the purposes of measuring the OPA's performance and that the OPA should work with stakeholders to develop a more satisfactory solution.

The OPA recognized these concerns to some extent through, for example, a response to an interrogatory by Board staff, stating that the OPA "has worked diligently to try to design effective metrics that convey the accomplishments of the organization and withstand the many changes to planned activities over the past 3 years, with little success."¹⁰

The OPA also submitted that, despite the concerns of some intervenors with respect to metrics, the intervenors did not oppose the revenue requirement or the usage fee.

Board Findings

The Board recognizes there are continued weaknesses in the OPA's setting and achievement of performance targets and metrics. These issues have been of concern to the Board in the OPA's two previous fees cases (EB-2009-0347 and EB-2010-0279) and remain generally unresolved at this time.

9 Ibid.

10 EB-2013-0326, Exhibit I Tab 6.6.4 Schedule 1.13 Staff 13 Page 2 of 2.

The Board echoes the views of previous decisions that the performance and efficiency metrics and milestones filed in conjunction with this application were of limited assistance to the Board in its determination of whether the applied-for net revenue requirement, is appropriate, and whether the OPA is achieving a reasonable standard of effectiveness and efficiency in performing the functions it is mandated to undertake. However, the metrics are not so flawed as to affect the revenue and expenses which the Board is asked to approve.

The Board expects that the merged entity's first fee submission will show an improvement in the setting and achievement of performance targets and metrics.

4. Stakeholder Engagement

The OPA's 2014-2016 Business Plan states that "Stakeholder communications will be a key priority, with an emphasis on greater transparency, establishing regular communications, maximizing social media and enhancing reporting."¹¹

Many intervenors expressed concerns regarding the OPA's consultation activities. A view expressed by several of the intervenors was that the OPA has not done enough to consult with intervenors, in particular intervenors representing consumers, for the purposes of program design, implementation and measurement.

The OPA submitted that it has done extensive work to consult with stakeholders and to improve its stakeholder consultation since its previous fees case.

Further, the OPA submitted that, despite the concerns of some intervenors with respect to stakeholder engagement, many intervenors did not oppose the revenue requirement or the usage fee.

Board Findings

The Board recognizes that issues regarding stakeholder consultation were a concern to the Board in the OPA's previous fees case (EB-2010-0279).

¹¹ EB-2013-0326, Exhibit A-2-1, Page 29 of 40

The Board notes that the OPA will be merging with the IESO which has a strong history of stakeholder engagement.

The Board's expectation is that both entities will concentrate on the strengths of their respective experience and achieve a stakeholder engagement process which includes the appropriate parties and allows for meaningful participation.

At this time, the Board considers it necessary to make provisions for the following procedural matters.

THE BOARD ORDERS THAT:

1. A final usage fee of \$0.439/MWh is approved;
2. The following registration fees are approved:
 - a) up to \$10,000 per proposal for electricity supply and capacity procurements, including conservation and load management procurements;
 - b) non-refundable application fees for the Feed-in-Tariff ("FIT") program of \$0.50/kW of proposed Contract Capacity, with a minimum of \$500 and a maximum of \$5,000;
 - c) Large Renewable Procurement ("LRP") qualification submission fee from request for qualification ("RFQ") applicants which is the sum of:
 - i. The greater of: (a) \$2,000 for the first (or only, if only one renewable fuel is proposed) proposed renewable fuel submitted; or (b) \$1.00 per kW of estimated contract capacity for all large renewable project(s) to a maximum amount of \$30,000; plus
 - ii. \$2,000 for each additional renewable fuel proposed; plus
 - iii. GST on the total of (a) and (b) above.

3. Revenue requirement comprised of the proposed 2014 operating budget of \$60.3 million is approved;
4. The OPA shall refund to ratepayers amounts in the FVDA in excess of \$5.0 million;
5. Establishment of the following accounts is approved:
 - a) 2014 FVDA;
 - b) 2014 GPCDA; and
 - c) 2014 RFDA.

Cost Awards

1. Intervenor shall file with the Board and forward to the OPA their respective cost claims, if any, within **7 days** from the date of this Decision and Order.
2. The OPA shall file with the Board and forward to intervenors any objections to the claimed costs within **17 days** from the date of this Decision and Order.
3. Intervenor shall file with the Board and forward to the OPA any responses to any objections for cost claims within **24 days** of the date of this Decision and Order.

All filings 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.

All filings to the Board must quote the file number EB-2013-0326 and be made electronically through the Board's web portal at in searchable/unrestricted PDF format at <https://www.pes.ontarioenergyboard.ca/eservice/>. Two paper copies and must also be filed at the Board's address provided below. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca/OEB/Industry. If the web portal is not available, parties may email their documents to the address below. Those who do not have internet access are required to submit all filings on a CD 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 4:00 p.m. on the required date.

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DATED at Toronto, November 6, 2014

ONTARIO ENERGY BOARD

Original signed by

Kirsten Walli
Board Secretary