

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;

AND IN THE MATTER OF Rule 42 of the Rules of Practice and Procedure of the Ontario Energy Board.

**OPG SUBMISSION RE NOTICE OF MOTION TO VARY
DATED JANUARY 28, 2009**

OVERVIEW

1. In the accompanying motion, OPG is seeking a review of the OEB's decision of November 3, 2008, as confirmed by the review panel's December 19, 2008 decision which dismissed, on preliminary grounds, OPG's November 24, 2008 motion for review and variance.
2. The decision of the review panel, which was made without a hearing, addressed only one of four substantial issues raised in OPG's motion for review. The core issues raised by OPG's motion were not premature and require consideration in a full hearing on those issues.
3. The core issues raised in OPG's motion were, in fact, directed at clear and unambiguous findings made by the OEB in its November 3, 2008 Decision in connection with the issue of regulatory tax losses and mitigation. It is OPG's contention that these findings were not supported by any evidence, were made without jurisdiction and, if not varied, will create immediate and lasting prejudice to OPG - a permanent reduction in OPG's test period revenue requirement of approximately \$342 million.

4. The principal findings in issue are not questions that “might be” raised before a future panel. Rather, the core issues raised in OPG’s motion are questions of law and jurisdiction that arise out of the Decision *in this case*. These issues are not premature.

5. OPG’s motion to review and vary the Decision raises *prima facie* issues of importance which question the correctness of the Decision and therefore warrant consideration. OPG submits that the issues raised in its motion meet the threshold for review.

BACKGROUND

6. The OEB issued its decision on OPG’s 2008-2009 payment amounts on November 3, 2008 (“Decision”).

7. In the Decision, the OEB made a series of findings approving as just and reasonable the recovery of OPG’s costs (OM&A costs, cost of capital, etc.). In some cases, the OEB accepted OPG’s evidence as filed, (e.g., the production forecast, hydro-electric operating costs, nuclear fuel costs and corporate allocated costs). In other cases, the OEB adjusted the forecast recoveries sought in OPG’s evidence, finding the recovery of different amounts to be just and reasonable (e.g., nuclear OM&A costs, nuclear advertising costs, the cost of equity). In all cases, however, the OEB found that the costs were recoverable as just and reasonable because:

- (1) they were required by O.Reg. 53/05;
- (2) they represented a reasonable forecast of reasonable costs in the test period; or
- (3) in the case of cost of equity, a 47% equity structure and a 8.65% return on equity met the “fair return” standard.

8. Having made these findings on all of OPG’s forecast costs and production, the OEB dealt with the issue of regulatory tax losses and mitigation at pages 167 - 172 of the Decision.

9. The regulatory tax loss and mitigation issue involved OPG’s calculation of accumulated regulatory tax losses from 2005 to the end of 2007 (“prior period”) and the application of those tax losses in the test period (April 1, 2008 to December 31, 2009) to reduce taxes payable to zero and to further reduce the revenue requirement in the test period by accelerating the return of the remaining regulatory tax losses to consumers.

10. In its findings on the regulatory tax loss and mitigation issue, the OEB found that:
- (1) OPG had calculated accumulated “regulatory tax losses of \$990.2 million” at the end of 2007;
 - (2) OPG’s proposals to exclude a tax provision from the test period revenue requirement and to reduce the revenue requirement by a further amount were “both linked” to the \$990.2 million of regulatory tax losses calculated by OPG;
 - (3) it was “not convinced” there were any regulatory tax losses to carry forward to the test period or later years (or, if there were, that they had been correctly calculated);
 - (4) the benefit of any pre-2008 tax losses “should be” apportioned between consumers and OPG on the principle that the party who bears a cost should be entitled to any related tax savings;
 - (5) it did not have the evidence necessary to determine the tax benefits which “should be” carried forward to offset payment amounts in 2008 and later periods;
 - (6) it did not agree that “regulatory tax losses permitted OPG to eliminate a provision for taxes” in the test period;
 - (7) OPG’s proposed reduction in the revenue requirement on account of regulatory tax losses was not on account of regulatory tax losses but because OPG had simply “agreed to absorb whatever tax provision would otherwise be required for those years (a revenue requirement reduction of approximately \$173 million);”¹
 - (8) it “did not accept” that there was any connection between the additional revenue requirement reduction proposed by OPG and any regulatory tax losses;
 - (9) OPG was nevertheless ordered to reduce its revenue requirement by a further \$169 million;² and
 - (10) in its next application, OPG is required to file an analysis of its 2005-2007 income tax returns that identifies everything that “should be taken into account in the tax provision for the prescribed facilities.”

THE MOTION TO REVIEW AND VARY

11. On November 24, 2008, OPG brought a motion to review and vary the Decision on the regulatory tax loss and mitigation issue (“Motion to Vary”).

¹ The derivation of the \$173 million is provided in Table 1.

² The derivation of the \$169 million is provided in Table 1.

12. The basis for OPG's Motion to Vary involved essentially four issues.

13. First, the manner in which the OEB disposed of the regulatory tax loss and mitigation issue was never raised in the hearing by any participant or the OEB. OPG was denied the right to respond to the approach taken by the OEB. Further, the OEB's disposition was made without the benefit of input from OPG, intervenors or Board Staff.

14. Second, the findings that OPG's proposed reductions to the test period revenue requirement had "no connection" to its calculation of regulatory tax losses and were "simply mitigation" and that OPG had "agreed to absorb" whatever taxes would otherwise have been payable were completely unsupported by any evidence. Those findings were, in fact, contradicted by the OEB's earlier findings that OPG had calculated accumulated regulatory tax losses to the end of 2007, proposed to bring forward those regulatory tax losses to eliminate taxes payable in the test period and proposed to reduce the revenue requirement by an additional amount by accelerating the return of the remaining balance of the accumulated losses to consumers.

15. Third, having made those findings, the OEB lost any legal basis for requiring a revenue requirement reduction of approximately \$342 million.³ The OEB had already made findings on all of OPG's costs, including return on equity ("ROE"), determining recovery of the approved amounts to be just and reasonable. Having made those findings, the OEB was required, as a matter of law, to establish payment amounts which would enable OPG to recover its OEB-approved costs, including its OEB-approved ROE. The OEB's order to reduce the revenue requirement by some further \$342 million, if not founded on regulatory tax losses, had no legal basis. Accordingly, this reduction of OPG's revenue requirement deprived OPG of its right to recover its OEB-approved costs and OEB-approved ROE.

16. Finally, having made the finding that OPG's mitigation proposals were not connected to regulatory tax losses, the OEB also held that the benefit of tax losses in the prior period should be apportioned between consumers and OPG on the basis of the principle that a party who bears a cost should receive the benefit of any related tax savings. The OEB, therefore, went on to

³ The derivation of the \$342 million is provided in Table 1.

order OPG to file in its next case an analysis of its 2005-2007 tax returns, showing everything that should be taken into account in calculating the tax provision for the prescribed facilities in that period. This order for a re-assessment of OPG's tax position during the prior period clearly contemplates further reductions of future test period amounts by the amount of any regulatory tax losses arising out of this analysis of the prior period tax returns.

17. In OPG's submission, while the fourth issue, the potential for future revenue requirement reductions on account of prior period regulatory tax losses, may well be an issue for a future panel, what will not be an issue for a future panel are the findings in the Decision related to the first three issues. These issues were not addressed in the review panel decision.

18. The principal remedies OPG sought in the Motion to Vary are:

- (1) a variance of the OEB's finding that there was no connection between the OPG's proposed revenue requirement reduction and regulatory tax losses carried forward from the 2005-2007 period;
- (2) a variance of the OEB's finding that OPG's revenue requirement should be reduced by \$342 million in the absence of any legal basis (such as regulatory tax losses carried forward from the 2005-2007 period) for the reduction; and
- (3) an order establishing a tax loss variance account to record the difference between the revenue requirement reduction of \$342 million embedded in the test period payment amounts and the regulatory tax loss amount that results from the analysis of prior period tax returns which the OEB ordered to be filed in OPG's next case.

DISPOSITION OF THE MOTION

19. The review panel of the OEB dismissed the Motion to Vary without a hearing. The review panel took the view that the Motion involved findings that "might be made" by a future panel of the OEB.

20. Contrary to the review panel's understanding, the principal basis of OPG's Motion was directed at findings that *were* made in the Decision proper and which do not involve considerations of what "might" happen in the future.

21. In EB-2006-0322 et al., a decision of May 22, 2007 involving a motion to review and vary aspects of the NGEIR decision, the OEB heard full argument from all parties on whether the "threshold test" referred to in Rule 45.01 had been met. In that decision, the OEB gave

careful consideration to the scope of its powers on a motion to review. The OEB found, for example, that its powers of review were not limited to the items enumerated in Rule 44.01(a) but extended to errors of mixed fact and law and errors of law and jurisdiction, including natural justice/procedural fairness issues, “which did not fall squarely within the list of enumerated grounds in Rule 44.01.”

22. The OEB found that the purpose of the “threshold test” in Rule 45.01 must be derived from the language of Rule 44.01 itself, which requires that a motion for review “raise a question as to the correctness of the order or decision.” The OEB held, “In the panel’s view, the purpose of the threshold test is to determine whether the grounds [of the motion] raise such a question.”

23. The OEB went on to conclude:

In demonstrating that there is an error, the applicant must be able to show that the findings are contrary to the evidence that was before the panel, that the panel failed to address a material issue, that the panel made inconsistent findings, or something of a similar nature. It is not enough to argue that conflicting evidence should have been interpreted differently.

The applicant must also be able to demonstrate that the alleged error is material and relevant to the outcome of the decision, and that if the error is corrected, the reviewing panel would change the outcome of the decision.

24. In OPG’s submission, its Motion to Vary set out (as outlined above in paragraphs 13 - 15) at least three “identifiable errors” which raise a substantial question as to the correctness of the Decision and which, if corrected, would materially affect the outcome. OPG does say, as set out in detail below, that how the OEB came to its decision on this issue denied OPG the right to be heard. OPG does say that the OEB’s findings were contrary to the evidence and were internally inconsistent. OPG does say that the OEB’s conclusions on the regulatory tax loss and mitigation issue were without legal basis and exceeded the OEB’s jurisdiction. Nor do any of these issues involve re-argument of a matter that has already been argued before the OEB in the main hearing. The basis of the OEB’s decision on the regulatory tax loss and mitigation issue has never been the subject of any argument.

25. Accordingly, OPG submits that its Motion to Vary is not premature. It clearly meets the threshold test articulated by the OEB in the NGEIR decision. As set out in more detail below, each of the three issues OPG raised in its motion identify a *prima facie* basis to question the correctness of the Decision.

DENIAL OF PROCEDURAL FAIRNESS AND NATURAL JUSTICE

26. As noted above, the OEB disposed of the regulatory tax loss and mitigation issue on a basis that was never raised or argued during the hearing. This had two unfortunate consequences. First, OPG (and others) were denied the opportunity to make submissions on a material issue. Second, the OEB disposed of the regulatory tax loss and mitigation issue without the benefit of hearing from OPG and others. For these reasons, the motion should proceed on the merits to enable all parties the opportunity to be heard on a material issue in respect of which there are *prima facie* grounds to believe the OEB was in error.

NO EVIDENCE TO SUPPORT THE FINDING OF “SIMPLY MITIGATION”

27. OPG’s proposal to reduce its test period revenue requirement by the amount of regulatory tax losses available to be carried forward was founded on the stand-alone principle and the “benefits follow costs” principle. The application of both these principles to the facts was explained in the evidence. Even though the prior period tax losses had been fully utilized by the end of 2007 on an actual basis, the “losses” were considered to have been attributable to the regulated assets, whereas the revenues against which they were offset had been derived from OPG’s unregulated assets. The major contributing factor to the creation of the tax losses was contributions to the segregated funds in respect of nuclear waste and decommissioning obligations – costs which, under OPG’s application, consumers would ultimately bear. For this reason, OPG calculated “regulatory tax losses” on the basis that they had been generated by the prescribed assets on a stand-alone basis since April 1, 2005 and should be made available to customers whose rates would, ultimately, be recovering the underlying costs to which those tax losses were related.

28. OPG’s evidence in chief at the hearing, which was never challenged in cross-examination or contradicted by any other evidence, was that the “regulatory taxable income calculation for the years 2005-2007 results in tax losses for those years” and that the regulatory tax losses

accumulated to the end of 2007 that were “available to be carried forward are \$990.2 million” (Exhibit F3, Tab 2, Schedule 1, p. 11).

29. OPG went on to say that it had:

applied its projected total cumulative tax losses at the end of 2007 to reduce the projected regulatory taxable income in 2008 and 2009 of \$163.0 M and \$324.0 M respectively, to nil. In this application, the projected tax losses are also used to mitigate the customer billing impact of OPG’s payment amount and deferral/variance account recovery proposals. (*Ibid*)

(see also Exhibit F3, Tab 2, Schedule 1, Tables 8 and 9)

30. Evidence of the connection between the revenue requirement reduction and the regulatory tax losses was also provided at Exhibit J1, Tab 3, Schedule 1, p. 15 and discussed in more detail in Exhibit K1, Tab 1, Schedule 2.

31. The fact that regulatory tax losses were the sole and exclusive basis for OPG’s proposal to reduce its revenue requirement during the test period is also reflected in Exhibit K1, Tab 1, Schedule 1, Tables 1 and 2 and Exhibit K1, Tab 2, Schedule 1, Table 1 and Tab 3, Schedule 1, Table 1.

32. The direct relationship between OPG’s proposal to reduce its revenue requirement and its calculation of regulatory tax losses was also explored in a number of interrogatories, particularly Exhibit L, Tab 1, Schedules 115 and 116. That evidence confirmed the pre-filed evidence in chief; that OPG had calculated regulatory tax losses generated by the prescribed assets on a stand-alone basis since April 1, 2005 and that those losses had been used to reduce OPG’s taxes on income attributable to the prescribed facilities as part of the proposed revenue requirement calculation for the benefit of the ratepayers through lower payment amounts in 2008 and 2009.

33. The issue of whether OPG’s proposal to reduce the test period revenue requirement was “not connected” to regulatory tax losses and whether OPG had just “agreed to absorb whatever tax provision would otherwise be required” for the test period was never put to OPG or any of its witnesses and was never raised by Board Staff, any intervenor or the OEB itself during the hearing. These findings of the OEB are unsupported, and are in fact contradicted, by the evidence at the hearing.

34. OPG's prefiled evidence on this issue was repeatedly confirmed during oral testimony. During the Technical Conference, May 13, 2008, Mr. Barrett said, in connection with OPG's proposed reduction of the test period revenue requirement on account of regulatory tax losses, that (at p. 124):

The revenue requirement as presented in the filing includes zero taxes payable during the test period. Beyond taking taxes to zero, we have through this mitigation proposal accelerated return of the leftover tax losses, so the revenue requirement presentation takes taxes to zero.

35. On June 10, 2008, the following exchange took place with Mr. Heard (at p. 44):

Mr. Thompson: But if there were no tax losses, am I right that the revenue requirement in 2008 and 2009 would be higher by the amount of taxes attributable to the \$163 million and the \$324 million shown at line 23, for 2008 and 2009?

Mr. Heard: Yes, that would increase the revenue requirement, if there was tax.

36. Again on June 20, 2008, Mr. Barrett testified that (at pp. 68 - 69):

We have essentially just looked at the regulated assets and calculated our regulated taxes, without reference to the unregulated part of the company. And that analysis over the 2005 to 2007 period results in tax losses. As you pointed out, as an actual matter of fact, those tax losses were used, but for purposes of our regulatory approach, we're saying that they are not used and they're available to ratepayers, and we have brought them forward to return to ratepayers.

37. The OEB's findings which de-linked regulatory tax losses and OPG's proposed revenue requirement reduction are also contradicted by the OEB's earlier findings of fact in the Decision, in which the OEB acknowledged that OPG's proposals "to exclude a tax provision from the revenue requirement and to reduce the revenue requirement by a further \$228 million mitigation amount are both linked to the \$990.2 million of "regulatory tax losses" that OPG claims existed at December 31, 2007" (Decision, p.168) and the OEB's finding that "OPG calculated the accumulated tax losses" of \$990.2 million at the end of 2007 by computing the taxable income or loss since April 1, 2005 of the prescribed facilities (plus the Bruce lease)" (Decision, p. 167).

38. The evidence was clear and unchallenged that the sole and exclusive basis for OPG's proposal to reduce its revenue requirement, as described above, was its calculation of regulatory tax losses from 2005-2007. The OEB's finding that there was "no connection" between OPG's mitigation proposal and regulatory tax losses cannot be supported by any evidence and therefore constitutes a clear error of law (see: Brown and Evans, *Judicial Review of Administrative Action in Canada*, pp. 15-18 to 15-22; *Sheddy v. Law Society of British Columbia*, [2007] B.C.J. No. 495, para. 18; *Singh v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 1034, paras. 7-8).

NO LEGAL BASIS FOR FURTHER REDUCTIONS

39. Although OPG is asking the OEB to review and vary the finding that OPG's mitigation proposal was unconnected to regulatory tax losses, OPG also submits that having made that finding, the OEB lost any authority it might otherwise have had to order a further reduction in OPG's revenue requirement.

40. It is a fundamental legal principle underpinning utility regulation that rates must be set at a level that permits a utility to earn a fair return on equity. Mr. Justice Lamont of the Supreme Court of Canada defined a fair return as:

By a fair return is meant that the company will be allowed as large a return on the capital invested in its enterprise (which will be net to the company) as it would receive if it were investing the same amount in other securities possessing an attractiveness, stability and certainty equal to that of the company's enterprise.⁴

41. The Supreme Court of Canada reaffirmed the right to a fair return in 1960. Mr. Justice Locke concluded in the *British Columbia Electric Railway Co. Ltd. v. British Columbia (Utilities Commission)* decision that "the [return] must be sufficient to enable it to pay reasonable dividends and attract capital" He also concluded "the obligation to approve rates which will give a fair and reasonable return is absolute."⁵

⁴ *Northwestern Utilities Ltd. v. Edmonton (City)*, [1929] S.C.R. 186 at 193

⁵ *British Columbia Electric Railway Co. Ltd. v. British Columbia (Utilities Commission)*, [1960] S.C.R. 837 at 854

42. The “absolute” nature of the obligation to set rates which enable the utility to earn a fair return has been endorsed by the Federal Court of Appeal in the *Transcanada Pipelines v. National Energy Board* case. The Federal Court of Appeal agreed that the absolute nature of the obligation to approve rates that will enable the company to earn a fair return means that the required return “must be determined solely on the basis of” the company’s cost of equity and must not be influenced by any resulting rate impact on customers.⁶

43. The legal requirement to apply the fair return standard has been recognized by numerous regulatory tribunals in Canada, including the OEB. In EB-2005-0421 (Toronto Hydro), for example, the OEB accepted that “as a matter of law, utilities are entitled to earn a rate of return that not only enables them to attract capital on reasonable terms but is comparable to the return granted other utilities with a similar risk profile.”⁷

44. The Supreme Court of the United States also long ago adopted the fair return standard. Rates, in the language of the U.S. Supreme Court, that are not sufficient to yield a reasonable return on the value of a utility’s property used to provide service are unjust, unreasonable and confiscatory.⁸

45. The U.S. Court of Appeals (D.C. Circuit) has held, in this regard, that if expenses are prudently incurred, there is a presumption that they “must be allowed as part of the composition of rates ... [o]therwise the so-called allowance of a return upon the investment ... would be a farce.”⁹

46. The decision of the British Columbia Court of Appeal in *Hemlock Valley Electrical Services Ltd. v. British Columbia (Utilities Commission)* is particularly relevant to the issue raised by OPG’s motion.¹⁰ In *Hemlock Valley*, the British Columbia Utilities Commission made a finding on Hemlock Valley’s rate base and the return on rate base to which Hemlock Valley

⁶ *Transcanada Pipelines v. National Energy*, [2004] F.C.A. at para. 36

⁷ April 12, 2006, pp. 32-33

⁸ *Bluefield Waterworks & Improvement Company v. Public Service Commission of the State of West Virginia et al.* 262 U.S. 679 (1923) at 692; *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) at 603

⁹ *Mountain States Telephone and Telegraph Company et al. v. Federal Communications Commission et al.*, 939 F.2d 1021 (D.C. Circuit, 1991).

¹⁰ (1992), 66 B.C.L.R. (2nd) 1, 12 B.C.A.C. 1, 23 W.A.C. 1.

was entitled. However, the BCUC felt that the resulting rate increase was too high and, accordingly, ordered that the rate base costs be phased in over three years, without provision for interest or any “catch up” on lost revenues from the first two years. Hemlock Valley appealed on the basis that the BCUC’s decision to phase in the rate increase over three years, without provision for sufficient revenues to enable the utility to catch up and recover the shortfall, violated the fair return principle, as articulated above. The British Columbia Court of Appeal agreed with Hemlock Valley and overturned the BCUC’s decision. The Court of Appeal said:

The Utilities’ Commission Act empowers the commission to determine what is a fair and reasonable rate of return upon the appraised value of the property of regulated utilities, but, having done so, requires the Commission to set rates so as to allow recovery of a rate which permits an opportunity to earn that return. In this case, the commission correctly exercised its discretion to determine what a just and reasonable return was, but wrongly failed to permit [Hemlock Valley] to charge a rate which gave it an opportunity to earn that return. For this reason, it is my view that commission O. G-77-90 cannot stand, and that O. G-11-91 must fall with it.

47. In this case, the OEB determined what level of cost recovery was just and reasonable, including a 47% equity ratio and an 8.65% return on that equity. The OEB then, without legal basis, further reduced OPG’s revenue requirement by approximately \$342 million over the test period. As shown in Table 1, attached to the end of this argument, the result of that reduction is that OPG will not earn its approved return during the test period.

48. In the absence of legal justification for the \$342 million reduction, the OEB lacked jurisdiction to impose it. The reduction cannot be justified on the basis that it was “simply mitigation” that was volunteered by OPG. This is because what OPG “volunteered” was the application of its calculation of regulatory tax losses from the prior period based on the standalone principle and the principle that “benefits follow costs.” The OEB found, however, that there were no regulatory tax losses and that there was “no connection” between OPG’s proposed revenue requirement reduction and regulatory tax losses.

49. In OPG’s submission, it is inconsistent for the OEB to find that there were no regulatory tax losses or that regulatory tax losses did not form the basis of OPG’s revenue requirement

reduction yet, at the same time, require OPG to make that reduction. In OPG's submission, the OEB had no jurisdiction to order that reduction of OPG's revenue requirement in the absence of legal justification.

REMEDY

50. First and foremost, OPG is seeking the right to be heard on an important issue that was never raised at the hearing.

51. OPG is also seeking to vary the OEB's conclusion that there is no link between the revenue requirement reduction of approximately \$342 million and its calculation of regulatory tax losses. OPG is doing so on the basis that this conclusion was unsupported (and contradicted) by the evidence. This issue does not concern something that might happen in the future. In the circumstances, OPG submits that this conclusion was wrong in law.

52. Similarly, OPG is seeking to vary the OEB's order to reduce OPG's revenue requirement by approximately \$342 million. The basis for this request is that, in the face of its finding that the revenue requirement reduction was not based on any prior period regulatory tax losses (or any other legitimate consumer claim to a further reduction), the OEB lacked any legal basis to order this reduction. This issue does not concern something that "might happen" in the future. This is a finding in this case that was, OPG submits, also wrong in law.

53. In OPG's submission, once the OEB decided that it was not satisfied there were any regulatory tax losses, or that they had not been correctly calculated, or that there was not sufficient evidence to determine the amount of those regulatory tax losses, the proper response was not to require OPG to proceed to reduce its revenue requirement by approximately \$342 million in any event. Rather, the only proper and lawful course open to the OEB in the face of those findings involved one of two choices:

- (1) remove the mitigation proposal from any calculation of the revenue requirement for the test period and remit the matter for further consideration to a future panel; or
- (2) establish a variance account to record the revenue requirement reduction of \$342 million embedded in the test period payment and consider the disposition of that

amount in the context of any regulatory tax loss calculations resulting from an analysis of prior period tax returns in OPG's next case.

54. OPG is seeking the second of these options as the most appropriate remedy in the current circumstances, given the OEB's Payment Amounts Order dated December 2, 2008.

| Table 1 Test Period Revenue Deficiency at Approved Payment Amounts ^{1,2} (\$M) | | | | | |
|--|--|-------|---------|-------------------------|----------------------------|
| Line No. | Item | Notes | Nuclear | Regulated Hydroelectric | Total Regulated Facilities |
| Revenues | | | | | |
| 1 | Payment Amount (\$/MWh) | 3 | 54.98 | 36.66 | N/A |
| 2 | Forecast Energy (TWh) | | 88.2 | 31.5 | 119.7 |
| 3 | Energy Revenue (line 1 x line 2) | | 4849 | 1155 | 6004 |
| 4 | Other Revenues | | 292 | 81 | 373 |
| 5 | Total Revenues | | 5141 | 1236 | 6377 |
| Costs | | | | | |
| 6 | OM&A | | 3794 | 212 | 4006 |
| 7 | Fuel & GRC | | 330 | 424 | 754 |
| 8 | Depreciation & Amortization | | 712 | 124 | 836 |
| 9 | Property & Capital Taxes | | 38 | 15 | 54 |
| 10 | Financing Costs | 4 | 235 | 211 | 446 |
| 11 | Income Taxes | 5 | N/A | N/A | 66 |
| 12 | Total Costs | | N/A | N/A | 6161 |
| 13 | Net Income (line 5 - line 12) | | N/A | N/A | 216 |
| 14 | Average Equity | 6 | | | 2978 |
| 15 | ROE at Approved Payment Amounts ((line 13 x 12/21) / line 14) | | | | 4.1% |
| DEFICIENCY CALCULATION: | | | | | |
| 16 | Test Period Net Income at 8.65% ROE (line 14 x 8.65% x 21/12) | | | | 451 |
| 17 | Deficiency Before Gross-up for Taxes (line 16 - line 13) | | | | 235 |
| 18 | Add Gross-up for Tax on Deficiency ((line 17 / (1-31.21%)) - line 17) | 7 | | | 107 |
| 19 | Revenue Deficiency to Achieve 8.65% ROE (line 17 + line 18) | | | | 342 |
| Components of Deficiency Required by the OEB | | | | | |
| 20 | Foregone Tax Provision (line 11 + line 18) | | | | 173 |
| 21 | Additional Mitigation | 8 | | | 169 |
| 22 | Total (line 20 + line 21) | | | | 342 |

N/A - Not Applicable

Notes:

- 1 All information is for the 21-month test period, April 1, 2008 - December 31, 2009.
- 2 All values from EB-2007-0905 Final Payment Order ("Final Order"), Dec. 2, 2008 unless otherwise noted.
- 3 Nuclear payment amount includes \$2.00/MWh nuclear variance and deferral account payment rider A.
- 4 Financing costs include long-term debt, short-term debt and financing for nuclear liabilities.
- 5 Income tax expense calculated using approved payment amounts.
- 6 Average Equity is calculated as follows:

| | Apr-Dec 2008 | 2009 | Average Test Period Equity |
|---|--------------|------|----------------------------|
| Approved regulated hydroelectric rate base | 3880 | 3870 | |
| Equity at approved equity ratio of 47% | 1824 | 1819 | |
| Test period average - regulated hydroelectric | | | 1821 |
| Approved nuclear rate base | 3509 | 3484 | |
| Average unfunded nuclear liability | 1060 | 1013 | |
| Rate base less average unfunded nuclear liability | 2449 | 2471 | |
| Equity at approved equity ratio of 47% | 1151 | 1161 | |
| Test period average - nuclear | | | 1157 |
| Total Regulated Facilities | | | 2978 |

- 7 Tax rate of 31.21% is the weighted average of 2008 and 2009 tax rates.
- 8 See Final Order, Appendix A, Table 3.