



EB-2009-0038

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.

NOTICE OF MOTION AND PROCEDURAL ORDER NO. 1

On January 28, 2009, Ontario Power Generation Inc. ("OPG") filed a Notice of Motion (the "Motion") for a review and variance of the Ontario Energy Board's ("Board") Decision with Reasons ("OPG Decision") (EB-2007-0905) dated November 3, 2008. A previous motion for review and variance of the OPG Decision was brought by OPG on November 24, 2008, and dismissed by the Board on December 19, 2008 (EB-2008-0380).

The Motion has been assigned file number EB-2009-0038.

OPG's Motion is for:

1. an Order:
 - (a) for an oral hearing of the Motion on the merits and, ultimately, for an order:

(i) varying the approximately \$342 million reduction in OPG's revenue requirement in the absence of any legal basis for the reduction;

(ii) varying the finding that there was no connection between OPG's proposed revenue requirement reduction and regulatory tax losses carried forward from the 2005-2007 period in the absence of any evidence to support this finding; and

(b) as an efficient method to give effect to (a) (i) and (ii) above, given the OEB's Payment Amounts Order dated December 2, 2008, establishing a variance account to record the revenue requirement reduction of \$342 million incorporated in the test period payment amounts and directing that the disposition of that account be conducted in conjunction with consideration of the analysis of prior period tax returns in OPG's next case;

or, in the alternative,

(c) for an oral hearing on the threshold question of whether OPG's Motion to Vary raises a substantial question as to the correctness of the Decision; and

2. such further and other relief as counsel may advise and the Board permit.

It is the intention of the Board to hold an oral hearing at which the threshold question of whether OPG's Motion raises a substantial question as to the correctness of the Decision, and the merits of the Motion, are considered concurrently. The Board expects any written submissions that are filed to address both matters.

The Board will adopt as intervenors in this proceeding, the intervenors and any other parties of record from the EB-2007-0905 proceeding. A list of the parties of record in that proceeding is attached as Appendix A. Any party that is not automatically adopted as an intervenor by the Board in this proceeding and wishes to participate as an intervenor or observer must notify the Board Secretary's Office immediately.

The Board considers it necessary to make provision for the following procedural matters. The Board may issue further Procedural Orders from time to time.

THE BOARD THEREFORE ORDERS THAT:

1. OPG shall file with the Board Secretary confirmation that it has served the parties to the EB-2007-0905 proceeding with the OPG's Notice of Motion and Submission dated January 29, 2009.
2. Intervenors and Board staff may file Submissions on the Motion. The Submissions shall be filed with the Board and copied to all parties of record in the EB-2007-0905 proceeding, and any new parties that the Board may adopt, on or before Wednesday, March 18, 2009.
3. OPG may file a reply Submission. The Submission shall be filed with the Board and copied to all parties of record in the EB-2007-0905 proceeding, and any new parties that the Board may adopt, on or before Monday March 30, 2009.
4. The Board will hear all parties' Submissions at an oral hearing to be held on Friday April 3, 2009. The hearing will commence at 9:30 am in the Board's Hearing Room at 2300 Yonge Street, Toronto, Ontario on the 25th floor.
5. The Board may order costs in this proceeding. Any party that was determined to be eligible for costs in the EB 2007-0905 proceeding shall be eligible for costs in this proceeding. Any party that is not automatically eligible for costs but expects to seek costs in this proceeding shall file a letter with the Board and copy OPG no later than March 9, 2009 which letter shall provide the grounds for the party's eligibility for costs. OPG will have until March 13, 2009 to object to any new cost eligibility request. Requests for cost eligibility and the determination of cost awards will be addressed in accordance with the Board's Practice Direction on Cost Awards. OPG will be ordered to pay costs for this proceeding.

All filings to the Board must quote file number EB-2009-0038, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format filed through the Board's web portal at www.errr.oeb.gov.on.ca. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may e-mail your document to Boardsec@oeb.gov.on.ca. Those who do not have internet access are required to submit all filings on a CD or diskette 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, and be received no later than **4:45 p.m.** on the required date. Parties must also include the Case Manager, Richard Battista richard.battista@oeb.gov.on.ca and Board Counsel, Donna Campbell donna.campbell@oeb.gov.on.ca in electronic correspondence related to this proceeding.

ISSUED at Toronto, March 2, 2009

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

APPENDIX "A"
TO
NOTICE OF HEARING AND PROCEDURAL ORDER NO. 1
BOARD FILE NO: EB-2008-0380
ISSUED: MARCH 2, 2009

EB-2007- 0905
Ontario Power Generation –
Payment Amounts for OPG’s Prescribed Facilities

List of Applicant and Intervenors

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**Ontario Energy Board
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List of Intervenor – EB-2007-0905
Rep. and Address for Service**

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AND

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