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.*

REPLY COMMENTS OF ONTARIO POWER GENERATION INC. RE: BOARD STAFF'S SEPTEMBER 24, 2009 SCOPING PAPER AND DRAFT FILING REQUIREMENTS

Ontario Power Generation Inc, ("OPG") submits the following reply comments to the submissions of various intervenors on Board staff's September 24, 2009 Scoping Paper and proposed revision to the Filing Guidelines. OPG's initial submission on November 2, 2009 addressed many of the issues raised by intervenors and those submissions will not be repeated. Instead, OPG will address the new issues and arguments raised in intervenor submissions that merit response.

This document is organized by issue and presents OPG's responses to the intervenor submissions on each issue whether the submissions relate to the Board staff's Scoping Paper or the Proposed Guidelines.

<u>Capital Projects</u>

Niagara Tunnel

School Energy Coalition ("SEC") proposes a full review of the Niagara Tunnel Project in this proceeding. Energy Probe makes a similar proposal. The proposal should be rejected because it is both unnecessary and impractical.

The proposal is unnecessary because Niagara Tunnel Project expenditures have no impact on the test period revenue requirement. The Niagara Tunnel Project will not come into service in 2011 or 2012. Accordingly, a detailed review of Project expenditures is premature and would not assist the OEB in evaluating OPG's payment amounts request.

Early in its submission SEC states: "Anything that feeds revenue requirement is by definition relevant…" The corollary to this statement is that items that will not impact the revenue requirement request are not relevant. The Niagara Tunnel project is such an item, for the reason outlined above.

Despite acknowledging that this project will not impact the payment amounts request, SEC suggests that such a prudence review would still be helpful. OPG disagrees. The OEB will conduct another review when OPG seeks to place amounts related to the Niagara Tunnel project in rate base. Any review conducted in the context of OPG's application to set payment amounts for 2011 and 2012 will, therefore be necessarily incomplete and duplicative.

Further, the proposal is impractical because it is not possible to perform a credible prudence review in the middle of a complex, multi-year project. How can prudence be assessed when the actual final cost and completion date are unknown and when there are substantial decisions that will influence the project's outcome that have not yet been made?

Moreover, as SEC recognizes, expenditures up to the initial project budget of $985 million approved by OPG's Board of Directors before April 1, 2008 are not subject to OEB prudence review. It is only amounts above this initial budget that will be reviewed by the OEB. Without knowing the project's actual final cost it is impossible to determine what amount is subject to prudence review. Without reviewing all the decisions and circumstances that will influence amounts above the initial budget, it is not possible to determine whether they have been prudently incurred.

Finally, SEC and Energy Probe claim that an early review is, as a practical matter, the OEB's best opportunity to influence this project because once it is completed the OEB will have a difficult time excluding any cost from inclusion in rate base due to imprudence. The reverse is true. It is only once the project is completed that the OEB will have the ability to assess its prudence and the opportunity to impact cost recovery via a prudence review.

As stated in OPG's initial comments, Niagara Tunnel Project expenditures will form part of OPG's hydroelectric capital budget for the test period. As such OPG 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, the in service dates for which are beyond the test period. OPG understands that in accepting OPG's capital budgets, the OEB is not determining the prudence of the yet to be completed projects included in that budget. That is a decision to be made once the project is complete and sought to be included in rate base.

Capital Projects and In-service Dates

During the course of the last hearing, OPG provided several documents that showed the major nuclear projects that would be coming into service in the test years and related nuclear in-service additions to specific nuclear projects in each year (see Ex. K6.1 and Ex. J6.5). As requested by the Consumers Council of Canada ("CCC") and SEC, OPG intends to file this type of information, including final in-service dates (month, year) with its application for major projects in both nuclear and hydroelectric.

Refurbishment and New Build

SEC proposes that an issue should be added dealing with the potential for stranded assets associated with nuclear refurbishment and new build. Neither of these projects have had any capitalized costs to date so there have been no stranded assets nor does OPG expect any in the future. The issue as framed in SEC's submission is hypothetical and SEC has provided no support for its concern that the issue may arise. OPG does not support the addition of the issue proposed by SEC as would be an inefficient use of hearing time to consider such a speculative issue.

Pickering Unit 2 and 3 Isolation Costs

SEC proposes as an issue: "Is the capitalization approach used for Pickering 2 & 3 appropriate?" The issue proposed by SEC does not address the direction provided by the OEB in its Decision in EB-2007-0905. That direction specifically requires OPG to review the accounting for the Pickering Unit 2 and 3 Isolation Project costs:

> *Thus, the Board directs OPG to provide in its next application a more detailed analysis of the nature of the costs and why accounting standards require that such costs be capitalized as part of the book values of the operating units, rather than treated as costs of shutting down units.* (EB-2007-0905, Decision with Reasons, p. 35)

The proposed filing guidelines (Section 1.3) include a requirement to address this direction from the OEB and OPG submits that this proposed filing guideline is sufficient and no specific hearing issue should be added to the Issues List. If the issue proposed by SEC is to be added, it should be worded consistently with the direction in the OEB's Decision: "Is the capitalization approach used for the Pickering Unit 2 and 3 Isolation Project appropriate?"

Capital Structure

Separate Capital Structures

OPG intends to meet the OEB's stated intent to "examine whether separate capital structures should be set for the regulated hydroelectric and nuclear businesses" (EB-2007-0905, Decision with Reasons, p.161). The Green Energy Coalition's submission attempts to re-write the OEB's previous decision to require that OPG develop an actual numerical proposal for separate capital structures. This puts the cart before the horse. The OEB should reject this attempted revision of its 2008 Decision. The Green Energy Coalition ("GEC") can address this matter if it so chooses, but the OEB should not compel OPG to develop such a proposal.

Return on Equity

2010 Earnings

OPG will not repeat its prior submissions on this matter. OPG agrees with the Power Workers' Union ("PWU") submission that the upcoming application is not an inquiry into the 2010 revenue requirement and that this issue should not be included for the reasons given in OPG's initial comments and those provided by the PWU.

Nuclear Operating Costs

Continuing Viability of Nuclear Facilities

AMPCO asks to include an issue on the prudence of continuing to operate nuclear facilities. AMPCO made a similar argument with respect to Pickering at the conclusion of the previous payment amounts proceeding. The OEB rejected this argument and held that a determination of the viability of the Pickering plants was beyond the OEB's jurisdiction. The OEB found that any decision about the continued viability of the plants would properly rest with OPG's shareholder (EB-2007-0905, Decisions with Reasons, p. 28). As AMPCO offers no reason for the OEB to reject its prior conclusion, the OEB should deny AMPCO's requested addition to the Issues List.

Other Revenues

OPG has already addressed why it would be inappropriate to add a discussion of congestion management settlement credits ("CMSCs") to the issues list in its initial submission. AMPCO's attempt to link CMSCs to surplus generation is unsupported and should do nothing to change the OEB's conclusion that CMSCs are not net revenues. Rather, CMSCs are compensation for costs OPG incurs. The OEB should reject attempts to needlessly recycle issues that have already been decided in a prior case.

Nuclear Waste Management and Decommissioning, Nuclear Liabilities

AMPCO's proposed formulation of this issue inappropriately focuses on exploration of alternative recovery methodologies. The relevant issue, as required by O. Reg. 53/05, is the proper determination of the revenue requirement associated with nuclear liabilities. For this reason, OPG prefers the wording that it suggested in its initial comments.

CME and AMPCO also propose that OPG provide reviews of regulatory precedents related to nuclear waste liabilities. CME further requests that OPG provide a presentation of how application of a National Energy Board Decision on pipeline abandonment costs would impact collection of OPG's nuclear liability costs. It is not OPG's burden, in applying for payment amounts, to provide research results on regulatory developments or to assess and present treatments outside of those which OPG proposes.

Information to be Filed

IFRS Data

OPG intends to file information on both an IFRS and GAAP basis for 2011. Consistent with the Report of the Board in EB-2008-0408, Transition to International Financial Reporting Standards, OPG plans to file one year of comparative analysis and a demonstration of revenue requirement impacts resulting from the transition to IFRS. OPG will provide Canadian GAAP information in 2011, the first year of its test period, to allow an understanding of the impact of the transition to IFRS on the test period revenue requirement and to allow comparison of the forecast information for the test period on a GAAP basis to the last year of actuals that will be available at the time of the filing (2009). The 2009 actuals will be prepared under Canadian GAAP, as that is the only set of accounting standards that applies to that year and the only basis that is used by OPG to track information for that year.

In order to prepare regulatory information for 2010 on an IFRS basis as proposed by SEC, OPG would have to develop a complete revenue requirement on an IFRS basis including, for example, calculation of regulatory tax, deemed interest expense, and return on equity. This represents a significant amount of additional work over what OPG requires for business purposes and in OPG's view, is not necessary to understand the impacts of the transition to IFRS.

AMPCO has suggested that OPG could file the 2011 and 2012 business plan information under Canadian GAAP and IFRS. OPG has serious reservations about the utility of doing so. The year 2012 is the third year of a five year business plan. As noted above, OPG will provide Canadian GAAP data for 2011 in order to address the regulatory objectives of the Board. To extend the application of discontinued accounting principles to formulate information for yet another year would add significant complexity and a great deal of work for little or no benefit to the regulatory process, in OPG's view. This exercise would also serve no business purpose as OPG does not intend to track or report its 2012 actual results under Canadian GAAP.

Variance Between Amounts in the OEB's Decision and Actual Spending

OPG plans to describe material variances both with respect to differences between actual and forecast spending and with respect to differences between actual spending and OEB decision amounts for the historical years 2008 and 2009 (there were no OEB decision amounts for 2007).

The Vulnerable Energy Consumers Coalition ("VECC") asks that OPG show how an OEB reduction in a budget for a particular area was addressed by changing spending in that area. Energy Probe makes a similar request. As VECC states:

> *the evidence relating to the 2009 variance from board approved should be specific to the Pickering A OM&A costs and the achievement of (or failure to achieve) a level of Pickering A OM&A specific costs that match the Board's decision, as opposed to, for example, treating the Board approved reduction at the level of total nuclear OM&A or total OM&A including nuclear and hydroelectric assets.*

VECC appears to be suggesting that if the OEB effects a revenue requirement reduction by disallowing recovery of a specific proposed budget item, OPG must respond by reducing spending in that same area by the amount of the OEB disallowance. This suggestion proceeds from a fundamental misapprehension of the regulatory process and OPG's responsibilities in operating the prescribed facilities.

VECC's view of the regulatory process confuses the OEB's role in setting just and reasonable payment amounts for the prescribed facilities with the applicant's role of running those facilities. In establishing the approved payment amounts, the OEB authorizes an overall revenue requirement; it does not establish spending caps for specific activities. OPG's role is to manage its business effectively in light of the totality of circumstances it faces including its approved revenue requirement. To the extent that OPG is successful, and non-controllable items turn out as forecast, OPG has an opportunity to earn its authorized rate of return.

To take the specific example of the reduction to the amount requested for Pickering A OM&A in the last payment amounts proceeding, it would have been impossible for OPG's management to respond to the OEB's revenue requirement reduction by actually implementing a ten percent cut in Pickering A's OM&A in the test period. OPG's evidence in the last hearing clearly established that the costs of its nuclear facilities are over 90% fixed. Pickering A's OM&A expenses consist of the salaries for employees whose services are essential for the safe and reliable operation of the plant and who are covered by collective agreements, and other expenditures essential for continued safe and reliable operation and regulatory compliance. Moreover, the new payment amounts came into effect on December 1, 2008, 8 months into the 21 month test period. Instead of targeting spending cuts at Pickering A, OPG responded to the need to control costs the way that any prudent applicant would and looked for additional savings throughout its operations.

In a similar vein, GEC proposes that OPG be required to justify spending "on items disallowed or at a level beyond that allowed by the OEB in past orders, i.e., where OPG has elected to fund such activity in whole or part from other (i.e. shareholder) funds,...." Energy Probe advocates a similar position. This suggestion should be rejected. It has the same flaw addressed above, (i.e., confusing the roles of the OEB and management), and the additional flaw of ignoring the fact that only a portion of OPG's business is subject to regulation by the OEB.

As explained above, any number of factors can combine to create differences between forecast and actual expenditures. These differences will require the expenditure of shareholder funds only if the applicant is unable to manage its business within the overall revenue envelope provided by the approved payment amounts and still earn its authorized rate of return. As GEC itself acknowledges, the OEB's jurisdiction is to set payment amounts for the prescribed facilities; it is not to review other aspects of OPG's spending unrelated to these facilities.

Compensation Data

SEC asks that OPG file its compensation data on a consistent basis and identify whether employee data is based on the number of full time equivalents ("FTEs") or actual number of employees, and whether such numbers are yearly averages or year-end figures. As in the last proceeding, the compensation data will generally focus on regular staff numbers (i.e., OPG staff, not contractors) because these are the individuals to whom the compensation figures relate. OPG will generally use year-end figures unless a different time period is required by the evidence (e.g., to show changes over the course of a year). In discussing labour in the nuclear, regulated hydroelectric or corporate business units for the future test period, where work may be performed by regular employees, temporary employees or contractors, labour is typically discussed in terms of FTEs. Again, a different breakdown may be used in the corporate compensation evidence to respond to the filing guidelines to provide number of full time employees and number of part-time employees or to make a particular point (e.g. to show changes in the use of contractors). For this purpose, a head count figure, rather than FTEs may be appropriate. OPG will endeavour to make it very clear what units are being used and the time period (e.g., year-end or yearly averages) to which these figures relate.

Business Plan

SEC would have OPG file its entire business plan. CCC supports the filing of the 2010-14 Business Plan, but makes no mention of including information related to OPG's non-regulated business. As SEC itself acknowledges, "the Business Plan will likely contain material that is not relevant to the Prescribed Facilities."[1] SEC is correct in this regard. As a result, OPG plans to file with its application only the 2010-14 Business Plan as it relates to the prescribed facilities.

Production Forecast

AMPCO recommends that OPG file information on actual and forecast generation losses due to spill. OPG does not support inclusion of such a requirement in the filing guidelines. Spill emerged as an issue in forecasting production from the regulated facilities in 2009 and is expected to continue as an issue in the bridge and test years. OPG will address spill for the bridge and test years in its evidence but does not have accurate forecast data on spill for the historical years that would allow a reconciliation of forecast vs. actual spill for these years.

AMPCO asks that OPG file a 2010 production forecast "prepared contemporaneous to the evidence presented in the EB-2007-0905 case for production in the year 2010." OPG submits that there is no value in comparing the 2010 forecasts included in the 2008-

[1] SEC speculates that the remainder of the business plan could be necessary to support the amount of corporate costs allocated to the prescribed facilities. OPG understands that it must justify both the corporate cost allocation process and the amount of corporate costs allocated to the prescribed facilities and will provide the appropriate evidence to support both the allocation and the amount of corporate costs.

2012 Business Plan (which was the basis for EB-2007-0905) to the bridge year forecast that underpins the current application. The 2010 forecast produced contemporaneously to the evidence in EB-2007-0905 was the third year of that plan. As stated in OPG's evidence in EB-20007-0905, beyond two years, the forecast methodology trends to historic monthly medians:

> *Because of the increasing uncertainty associated with predicting natural systems beyond a six month period, forecasts for periods beyond two years assume that water availability trends back towards historic monthly medians. This assumption reflects historical trends.* (EB-2007-0905, Ex. E1-T1-S1, p. 2, line 23)

The application will become overly complex if there are different bases used for different years in different parts of the application. OPG submits that the basis of the information for the hydroelectric production forecast for 2010 should be the same as that for the rest of the application, i.e., the 2010 forecast from the 2010 – 2014 business plan.

Materiality Thresholds

SEC seeks to lower the materiality threshold of OM&A reporting from $20 million to $5 or $10 million. OPG submits that the current threshold worked well in the last payment amounts proceeding and is appropriate for a company with an annual revenue requirement of over $3.5 billion. To the extent that a specific issue requires a more granular presentation, OPG will provide it.

Revenue Scenarios

SEC speculates that OPG may request that a portion of its approved revenue requirement be recovered through a fixed payment and may propose a new hydroelectric incentive design. Based on this speculation, SEC asks that OPG be required to produce "a reasonable set of revenue scenarios" to support these possible proposals. A filing guideline this vague serves no purpose. A better approach would be to have no guideline and recognize, as OPG does, that as the applicant it has the burden of explaining and justifying the impacts of any proposal it might make regarding the design of the payment amounts or the hydroelectric incentive mechanism.

Filing Date

At the October 22 stakeholder meeting, OPG fully explained how the timing of its filing would allow for projections based on the approved 2010-14 Business Plan and inclusion of audited 2009 financial data. OPG indicated that it could not prepare a filing that included this information before late March. Board staff supported OPG's proposed filing time line and indicated that it provided a reasonable amount of time to conduct the proceeding and establish new payment amounts for implementation on January 1, 2011. For these reasons, the OEB should reject SEC's attempt to seek an earlier filing date.