

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 to charge for the year 2010.

REPLY SUBMISSIONS OF THE ONTARIO POWER AUTHORITY

Introduction

1. These are the reply submissions of the Ontario Power Authority (OPA) filed pursuant to the Board's Decision and Procedural Order No. 2 in this proceeding. In the Board's Decision it accepted the Settlement Proposal dated February 24, 2010 and, by way of Procedural Order No. 2, it made provision for argument of issues set out in the Settlement Proposal. The OPA has received final arguments from three parties, the Association of Major Power Consumers in Ontario (AMPCO), Energy Probe Research Foundation (Energy Probe) and the Vulnerable Energy Consumers Coalition (VECC).

2. In the Settlement Proposal, the parties agreed as follows:

(a) The operating budgets for the OPA's Strategic Objectives 1 through 6 for 2010 are accepted;

(b) The OPA's proposed usage fees, registration fees for electricity supply and capacity procurement and application fees for the Feed-in Tariff program for 2010 are accepted; and

(c) The OPA's proposed Deferral and Variance Accounts are appropriate and the OPA's proposals to dispose of the balances in the Government Procurement Costs and Forecast Variance Deferral Accounts are reasonable and appropriate.

3. The Settlement Agreement provides for parties to make written submissions to the Board on six outstanding issues. In its final argument, AMPCO indicated that, upon

further review, it accepts the OPA's position with respect to one of the six issues. This leaves five issues to be addressed in argument, as follows:

- (a) whether the OPA should develop internal processes to be able to track and report staffing and other costs on a per-project basis for the next revenue requirement submission;
- (b) whether the OPA's ratio of contract staff to permanent staff is appropriate
- (c) whether the OPA should provide additional detail in the establishment of test year milestones and the reporting of its achievements;
- (d) whether the OPA should bill third parties for the costs incurred to provide analysis and support in regulatory proceedings, based on the tracking of costs referred to in paragraph 3(a), above; and
- (e) whether the proposed disposition of the outstanding balances in the OPA's Retailer Contract Settlement and Retailer Discount Settlement Deferral Accounts is appropriate.

4. The OPA's response to the submissions made by intervenors on these five issues will begin with general comments to correct an apparent misunderstanding about the nature of the OPA's mandate. Then, the response will address each of the five specific issues in turn.

The OPA's Mandate

5. The submissions made by intervenors assume that the OPA's mandate is entirely or largely project-based. This is apparent from Energy Probe's position that the OPA should track costs on a per-project basis, it is apparent from VECC's submission that the OPA should provide additional detail in the form of in-year milestones and it is apparent from submissions that the OPA should have a higher ratio of contract employees to regular employees.

6. Energy Probe goes further than the other intervenors and asserts that the OPA's "long term existence in its present corporate form is highly questionable".¹ The basis for this assertion, according to Energy Probe, is The Arnett Review Panel Phase II Final

¹ Energy Probe Final Argument, para. 21.

Report on Ontario's Provincially-Owned Electricity Agencies, which was issued in December of 2007.

7. A similar assertion was made by Energy Probe in the OPA's 2009 revenue requirement proceeding (EB-2008-0312) and was addressed by the Board in its Decision. The Board's EB-2008-0312 Decision and Order contains the following comments about the Arnett Report:

...as the OPA points out, the recently introduced Bill 150 is a major legislative initiative by the Ontario government on electricity matters and there is no indication in that proposed legislation that the Government intends to act on the recommendations in the Arnett Report as it pertains to the OPA.²

8. Bill 150 has, of course, taken effect as Ontario's new *Green Energy and Green Economy Act, 2009*³ (the Green Energy Act) and this legislation has given the OPA a number of important new responsibilities. It is even more evident now than it was a year ago that there is no reason to anticipate that the Ontario Government "intends to act on the recommendations in the Arnett Report as it pertains to the OPA".

9. The OPA was specifically asked, in an interrogatory from Energy Probe, whether it considers itself to be a transitional agency.⁴ The answer to this interrogatory pointed out that recent developments have resulted in increased responsibilities and that these developments indicate "an ongoing role for the OPA for the foreseeable future". The interrogatory response, and the answer to another interrogatory from Energy Probe,⁵ made note of the following:

~ as set out in the OPA's Business Plan,⁶ conservation savings are expected to increase by 40 per cent and electricity generation contracts under OPA management will double in megawatts, representing an additional \$30 billion in investment in the sector;

~ the enactment of the Green Energy Act has placed a high priority on renewable energy and conservation initiatives and these are both areas that fall within the OPA's statutory mandate;

² EB-2008-0312 Decision and Order, page 5.

³ S.O. 2009, c. 12.

⁴ Ex. I-3-14.

⁵ Ex. I-3-8(d).

⁶ Ex. A-2-1.

~ the OPA has been tasked with expanded responsibilities with regard to the development and implementation of the Feed-in-Tariff (FIT) program and increased levels of consultation with stakeholders, including LDCs, transmitters, First Nations and Metis and other communities; and

~ the contracts that the OPA has executed with many counterparties have terms ranging from 5 to 50 years.

10. The OPA's 2010-2012 Business Plan makes clear that the OPA will be pursuing many significant initiatives during the term of the plan and twelve of these are described in the highlights of the plan.⁷ This part of the Business Plan indicates that the OPA expects a doubling of megawatts under contract to more than 23,000 MW and a tripling of investment in the sector to \$44 billion by 2012.

11. The OPA therefore submits that there is no support for Energy Probe's belief that the OPA's long term existence is "questionable". With respect to the other assumption made by intervenors about the OPA's mandate, it is true that, not unlike many other organizations, the OPA carries out project-related activities. However, the OPA's operating budget predominantly reflects ongoing activities rather than work that comes to an end upon completion of specific projects. Procurement contracts must be managed on an ongoing basis after they have been signed, the governing legislation makes clear that planning is an ongoing function that does not come to an end when a particular plan has been prepared and conservation programs must be implemented, managed and evaluated after they have been designed.

12. In considering the submissions made by intervenors, it is submitted that the Board should take account of the fact that these submissions have incorrectly assumed that the OPA is a temporary project-oriented organization.

Specific Issues

Tracking of Costs

13. Energy Probe submits that the Board should direct the OPA to collect costs by project and by functional area and to provide detailed costs and budgets by project and functional area.⁸ Apparently, Energy Probe believes that this would be useful in order to allow comparisons to "similar functions in other companies".⁹ The OPA notes that its management does make comparisons with other organizations and that its staff brings external experience which provides a basis for comparison. However, Energy Probe's

⁷ Ex. A-2-1, pages 2-3

⁸ Energy Probe Final Argument, para. 12.

⁹ Energy Probe Final Argument, para. 11.

interest in making comparisons must be viewed in light of the fact that there simply is not a comparable organization that has a similar set of responsibilities for implementation and management of such a wide variety of initiatives, including Ontario's FIT program, and for dealing with such a wide spectrum of contractual counterparties and stakeholders.

14. In fact, as has been the case since its first revenue requirement submission to the Board (for 2006), the OPA provides detailed costs and budgets by strategic objective.¹⁰ These strategic objectives are functional areas: Strategic Objective 1 is the "functional area" of planning; Strategic Objective 2 is conservation; Strategic Objective 3 is procurement and contract management; Strategic Objective 4 is policy and analysis; and Strategic Objective 5 is support functions. Energy Probe has not explained how its suggestion that costs be presented by "functional area" is any different from, or would add any value to, the current presentation that aligns directly with the OPA's strategic objectives.

15. In addition to the presentation of costs by strategic objective, the OPA has included in its filing a considerable number of other cost breakdowns. For example, it has provided a breakdown (and variance analysis) of operating costs by major expense category,¹¹ it has provided a breakdown (and variance analysis) of compensation and benefits costs,¹² it has provided a breakdown (and variance analysis) of operating and administration expenses,¹³ it has provided a breakdown (and variance analysis) of professional and consulting costs¹⁴ and it has provided a breakdown (and variance analysis) of capital expenditures.¹⁵ In addition, the evidence presents and explains the OPA's 2010 incremental spending on an organizational basis that breaks out the OPA's key initiatives and it compares the 2010 budget to the 2009 budget by initiative.¹⁶

16. The OPA often uses interdivisional teams to maximize efficiency and flexibility and to encourage staff development. This makes it very difficult to track staff time on a project basis and, further, the OPA's accounting system is not set up to capture many operating and administration expenses on a project basis. No questions were asked during the interrogatory phase of this proceeding about the costs of developing a capability for the OPA to track expenses on a project basis and, accordingly, there is no evidence on the record about these costs. Further, as stated above, it is not correct to assume, as intervenors have done, that the OPA's mandate is entirely or largely project-based (in the sense of "projects" that are not ongoing activities). Thus, there is no factual underpinning to support a conclusion that the suggestion made by Energy Probe would represent good value for money spent.

¹⁰ See the B series and the D series of exhibits filed in this proceeding by the OPA.

¹¹ Ex. D-2-1, page 6, Table 2.

¹² Ex. D-2-1, page 7, Table 3.

¹³ Ex. D-2-1, page 11, Table 9.

¹⁴ Ex. D-2-1, page 10, Table 7.

¹⁵ Ex. D-2-1, page 14, Table 11.

¹⁶ Ex. D-2-1, pages 2 to 6 and Table 1.

17. The OPA therefore submits that the Board should not require the cost presentations suggested by Energy Probe for two very simple reasons. First, no explanation has been given as to why the variety of detailed cost breakdowns currently provided by the OPA is not adequate or appropriate. Second, Energy Probe has not explained how any value would be added by a requirement that costs be presented in a different format.

Contract Staff and Permanent Staff

18. Energy Probe believes that the OPA should increase the proportion of contract employees to regular employees on its payroll. This issue is, in effect, a carry-over from the OPA's 2009 revenue requirement proceeding and, at least in part, it reflects Energy Probe's view of the Arnett Report that has already been addressed by the Board in the EB-2008-312 Decision and Order.¹⁷

19. Because the staffing issue was also raised in the 2009 revenue requirement proceeding, the OPA filed evidence in that case that responded in detail to the issue. The OPA explained its extensive three year planning process that identified work and consequent resources required to meet its objectives in the period from 2009 to 2011. Certain of the OPA's evidence about hiring practices from the 2009 proceeding was filed in this case as part of the response to Energy Probe Supplemental Interrogatory 23.¹⁸

20. The Attachments to Energy Probe Supplemental Interrogatory 23 set out at some length the factors that the OPA takes into account when it determines whether a position should be filled on a temporary or regular basis. If anything, the important, ongoing responsibilities given to the OPA by the Green Energy Act have only strengthened the factors that tend to support hiring of regular employees rather than temporary employees.

21. In its pre-filed evidence for this case, the OPA again discussed the decision-making process that it undertakes when it hires permanent or temporary staff.¹⁹ This evidence explains at a general level the reasons for an increased number of Full Time Equivalents (FTEs) in 2010.²⁰ At a more specific level, it also provides a detailed explanation of staff changes for each of the six strategic objectives.²¹

22. The OPA submits that its hiring practices should not be governed by a theoretical or even arbitrary concept of a target percentage of contract employees in its workforce. Energy Probe suggests that at least 10% of the OPA's staffing requirements should be

¹⁷ See paragraphs 22-24 of Energy Probe's Final Argument.

¹⁸ Ex. I-3-23 and Attachments.

¹⁹ Ex. D-2-1, pages 7-9.

²⁰ Ex. D-2-1, page 8.

²¹ Ex. D-2-1, page 9.

temporary and contract staff and it grounds this suggestion on the mistaken belief that the OPA's "work program" is "volatile".²² While it is true that the OPA's mandate has changed over the years since the organization was created, there is no evidence that its workload is "volatile", or indeed that there have ever been any significant downward swings in its mandated workload. Given the many new additions to the OPA's range of responsibilities, there is no reason to expect any downswing in its workload in the foreseeable future. Some of the OPA's additional responsibilities are summarized in paragraphs 9 and 10, above, and others include the following:

- ~ economic assessments and regional planning initiatives to support efficient system expansion for renewable generation;
- ~ increased interaction with LDCs with respect to distribution system plans;
- ~ development of conservation plans with LDCs in a manner consistent with the Green Energy Act delivery model; and
- ~ increased regulatory involvement in applications for approval of projects by others, in order to give effect to the Green Energy Act and the OPA's system planning.

23. It is a necessity that the OPA must have the capacity to respond effectively to the requirements of the mandate given to it by the Government of Ontario. In order to ensure that it has this capacity, the OPA must find an appropriate balance of resources including regular employees, contract employees and consulting services. The OPA applies good human resources practices in order to achieve the optimal balance of these resources. This means, among other things, using permanent employees to meet core long term requirements and using temporary and consulting resources for non-core short-term assignments.²³

24. Rather than applying a theoretical or arbitrary percentage of contract employees, the OPA submits that its staffing requirements should continue to be determined in accordance with good human resources practices. The evidence reveals clearly the efforts to which the OPA has gone in order to ensure that its hiring of employees is based on these practices and the OPA urges the Board not to heed the suggestions made by Energy Probe.

²² Energy Probe Final Argument, paragraphs 21 and 27.

²³ Ex. D-2-1, page 7.

Milestones

25. In its final submissions, VECC discusses milestones that are provided by the OPA in its Business Plan and that, for the purposes of consistency, are referred to in the evidence for the revenue requirement proceeding.²⁴ These milestones are formulated for the purposes of the Business Plan, which is a strategic document, and are intended to be strategic in nature. The milestones are not intended to be used or interpreted in the manner assumed by VECC in its submissions.

26. VECC puts forward a series of points that essentially amount to a critique of the Business Plan milestones. For example, with respect to two of the milestones, VECC says that no guidance is given as to when in 2010 planning phases will be completed. With respect to another, VECC says that the particular item is an ongoing activity, rather than a milestone.

27. VECC's critique of the Business Plan milestones misses the point that these are strategic guideposts for business planning purposes. When understood in their proper context - business planning - there is no question but that the milestones are appropriate for the intended purpose. As well, the OPA points out that, in this context, management of the OPA is accountable for achievement of the milestones and the OPA reports annually on the status of achieving the milestones:

28. The important point is that VECC's series of comments on the Business Plan milestones has little or nothing to do with the revenue requirement submission. It is true that the revenue requirement submission follows upon the Minister's approval of the Business Plan and that, for consistency, the milestones are carried forward to the evidence in the revenue requirement filing. However, the revenue requirement filing is based on a presentation that includes detailed budgets, variance explanations and cost breakdowns. These are suited to the nature of the OPA's responsibilities and are aligned with the OPA's strategic objectives. With the greatest of respect to VECC, the OPA submits that VECC has allowed itself to be distracted from the material elements of the revenue requirement submission by milestones that were never intended to be used in the way put forward by VECC.

Cost Recovery

29. Energy Probe submits that the OPA should recover "assistance costs" for performing reviews of "green energy plans" of distributors and transmitters and for providing "expert assistance" at hearings.²⁵ Energy Probe makes plain that its submissions on this point are premised on the belief that the purpose of the OPA's

²⁴ VECC Final Submissions, section 2.0.

²⁵ Energy Probe Final Argument, paras. 13 and 15.

involvement in these activities is to provide “assistance” to distributors and transmitters.²⁶

30. Unfortunately, the fundamental premise of Energy Probe’s argument is not correct. The OPA does not review the plans of distributors and transmitters, nor does it provide support at hearings, in order to advance the interests of particular utilities. The OPA’s role is to bring to these activities a broader perspective that considers the plans and proposals of particular utilities in the context of the best interests of the Province, rather than just the interests of individual utilities. If the OPA concludes that a proposal by a utility is in the provincial interest, the “support” that the OPA may provide at a hearing before the Board is to advance a broader interest than just the interests of the utility that has brought forward the proposal.

31. The role of the OPA in applying a broader provincial planning perspective was explicitly recognized by the Board in EB-2008-0272. The Board’s Decision in that case contained a number of comments about the OPA’s role, including the following:

Part of the OPA’s mandate ... is to conduct independent transmission planning and to engage in activities that support the goal of ensuring adequate, reliable and secure electricity supply in Ontario. The Board expects that as the OPA exercises its mandate as the legislated provincial power system planner it will form opinions as to what is needed pertaining to transmission assets.²⁷

(Emphasis added.)

32. The OPA’s broad public interest role was addressed as well in the comments that the OPA filed in EB-2009-0397 regarding the Board’s Distribution Filing Requirements for Distribution System Plans under the Green Energy Act. The OPA’s comments in this context included the following:

The OPA agrees that ... coordination is critical to achieving the GEA goals. Distribution System Plans must be developed with a view to the system as a whole, incorporating all known information regarding applicable system constraints, proposed renewable generation projects, merchant generation or other OPA procurements. The OPA has a direct interest in ensuring that LDCs have the information they require to compile this overall system view in developing their Plans, and agrees with the Board’s

²⁶ The words “assistance” or “assisting” appear at least five times in paragraphs 13 to 15 of Energy Probe’s Final Argument.

²⁷ EB-2008-0272 Decision with Reasons (Hydro One Networks Inc., 2009 and 2010 Transmission Revenue Requirement and Rates), May 28, 2009, page 43.

proposals with regard to the necessity of an OPA review of Detailed System Plans and the provision of a letter of comment.²⁸

(Emphasis added.)

33. The OPA's review of the plans of transmitters and distributors is actually just one step in a much more extensive process. Most of the OPA's planning effort is directed towards a regional and provincial analysis of the system: the review of the plans of transmitters and distributors is to a large extent a check against this regional and provincial planning perspective. The OPA does not believe that it is feasible or appropriate to attempt to attribute to particular transmitters and distributors the costs of the regional and provincial planning that underlies the OPA's review of their respective plans.

34. Moreover, the distributors are required to submit their plans to the OPA pursuant to the Board's Filing Requirements for Distribution System Plans. The filing requirements state as follows:

Each distributor is required to submit its GEA Plan to the OPA for comment prior to filing. The OPA comment letter must be filed with the GEA Plan, and any response to the letter from the distributor must be included in the application or reflected in the GEA Plan as filed.²⁹

The OPA submits that LDCs should not be charged for the OPA's costs in circumstances where the LDCs are required to obtain the OPA's comments on their plans.

35. In short, the OPA does not engage in the activities referred to by Energy Probe in order to provide "assistance" by advancing the individual interests of distributors and transmitters. It does so because of its own direct interest in fulfilling its statutory mandate to ensure that a broader perspective is considered. The OPA submits that it is not appropriate to charge other utilities for the OPA's costs of activities that it undertakes in order to fulfill its mandate of bringing a broader perspective to the plans and proposals of individual utilities.

Disposition of Deferral Account Balances

36. AMPCO's final argument is primarily focused on the disposition of the outstanding balances in the Retailer Contract Settlement Deferral Account and the

²⁸ EB-2009-0397, Ontario Power Authority Comments, Filing Requirements: Distribution System Plans Under the Green Energy Act, February 2, 2010, page 1.

²⁹ EB-2009-0397, Filing Requirements: Distribution System Plans – Filing Under Deemed Conditions of Licence, March 25, 2010, page 7.

Retailer Discount Settlement Deferral Account. AMPCO recommends that the Board direct the OPA to report in its next case on options that could be implemented in 2011 to recover the remaining balances in the accounts from particular “customer classes”.³⁰ VECC opposes the recommendation made by AMPCO on a number of grounds that are set out in VECC’s final submissions.³¹

37. At the time of the OPA’s first revenue requirement submission to the Board (EB-2005-0489), the balance of the retailer settlement amounts was a very significant credit that was more than large enough to completely offset the OPA’s operating budget for 2006. The OPA proposed to apply this credit amount for the benefit of all electricity consumers in the Province by setting the amount off against its operating budget and not charging a fee for 2006.

38. During the course of the EB-2005-0489 proceeding, the OPA was asked whether the benefit of the retailer settlement credit amount should flow to all electricity consumers, or just to a particular group of consumers. The OPA explained that the benefit should flow to all consumers, because of the inconsistent prior record with respect to the electricity consumers who bore the risk related to retailer payments.³² All participating parties agreed to the OPA’s proposal and it was approved by the Board.³³

39. At the time of last year’s revenue requirement submission to the Board by the OPA (EB-2008-0312), the total outstanding balance of the Deferral Accounts was a debit amount. The OPA proposed that this amount be recovered from all electricity consumers in the Province over a three year period. All participating parties, including AMPCO, agreed to the OPA’s proposal and it was approved by the Board.³⁴ During 2009, the OPA proceeded with the first year of recovery of the debit amount and, pursuant to the Board-approved Settlement Proposal in this case, recovery of the debit amount from all electricity consumers will continue in 2010.

40. The OPA submits that, for a multitude of reasons, AMPCO’s recommendation to the Board for 2011 should not be accepted. These reasons include the following:

- (a) The original reasoning that resulted in all electricity consumers receiving the benefit of the large credit balance in 2006 remains unchanged – in other words, it is not correct to assume that there is a consistent record that a particular group of consumers bore all of the risk associated with retailer payments;

³⁰ AMPCO Final Argument, para. 13.

³¹ VECC Final Submissions, section 4.0.

³² EB-2005-0489 Technical Conference transcript, pages 142-146.

³³ EB-2005-0489 Settlement Proposal, February 8, 2006, pages 16-17; EB-2005-0489 Transcript, February 13, 2006, pages 40-43 (oral decision of Board).

³⁴ EB-2008-0312 Settlement Proposal, page 8, and EB-2008-0312 Decision on Settlement and Procedural Order No. 2, March 6, 2009.

(b) The treatment of the outstanding debit balance should be consistent with the treatment of the credit balance in EB-2005-0489 that was agreed to by all parties;

(c) The three-year recovery of the debit balance from all electricity consumers was agreed to by all participating parties, and approved by the Board, in EB-2008-0312 and the manner of recovery of the outstanding debit balance should not be changed in the final year of the three year period;

(d) While AMPCO proposes that the OPA present options in 2011 for the remaining balance to be recovered from particular "customer classes", the OPA does not in fact have "customer classes" – the OPA's revenue requirement represents costs that are incurred for the overall benefit of provincial electricity consumers;

(e) Given that the OPA's costs are incurred for the overall benefit of all provincial electricity consumers, the OPA's practice, like that of the IESO, has been to charge a fee that is recovered on a general volumetric basis and this approach has been approved by the Board in previous revenue requirement cases; and

(f) No interrogatories were asked in this case about the costs or feasibility of developing a capability for differential recovery of the OPA's fees from "customer classes" and thus no interrogatories were asked that would allow a comparison of the implementation costs to the potential impacts on electricity consumers of following AMPCO's suggestion in 2011 – the OPA therefore submits that there is no evidentiary basis for the Board to determine the cost-effectiveness of AMPCO's proposal to create a capacity for differential collection of the OPA's fees, which would only affect recovery of the balance from the Deferral Accounts for a temporary one-year period.

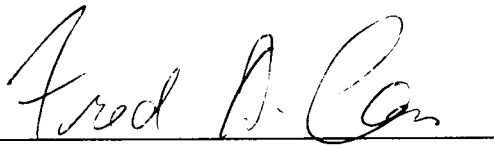
Order Requested

41. The OPA therefore submits that the Board should not accept any of the suggestions, proposals or arguments put forward by AMPCO, Energy Probe and VECC.

In accordance with the Board's Decision accepting the Settlement Proposal dated February 24, 2010, the OPA requests that the Board grant an order giving effect to the approval of the OPA's proposed fees for 2010, its 2010 expenditure and revenue requirements and its deferral and variance account proposals.

All of which is respectfully submitted.

March 29, 2010

A handwritten signature in cursive script, reading "Fred D. Cass", written over a horizontal line.

Fred D. Cass
Counsel for the Ontario Power Authority