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July 13, 2010

VIA COURIER AND RESS

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, Suite 2700
Toronto, ON M4P 1E4

Dear Ms. Walli:

EB-2010-0008 OPG's Submissions Re: Draft Issues List

Attached, please find OPG's written submissions regarding the Draft Issues List. Pursuant to the OEB's Procedural Order #1, I am providing two (2) hardcopies and one electronic copy in searchable PDF format filed through the OEB's web portal (RESS).

Yours truly,

[Original signed by]

Barbara Reuber

Encl.

- c. Carlton Mathias, OPG (email)
- Charles Keizer, Torys LLP (email)
- EB-2010-0008 Intervenors (email)

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.

**WRITTEN SUBMISSIONS OF THE APPLICANT,
ONTARIO POWER GENERATION INC.
RE: DRAFT ISSUES LIST**

Introduction

In accordance with the Ontario Energy Board's (the "OEB") Procedural Order No. 1 in this proceeding and further to the OEB Staff's revised Draft Issues List dated July 7, 2010 (the "Draft Issues List") these are the submissions of Ontario Power Generation Inc. ("OPG"). In these submissions, OPG has proposed certain revisions to the Draft Issues List and provided a rationale for each proposed change. Proposed wording revisions are marked in black-line. The numbers below correspond to the issue numbers in the Draft Issues List. OPG has no objection to the wording for the following issues: 1.1; 2.1; 2.2; 3.1; 3.2; 3.3; 4.3; 4.6; 4.7; 5.1; 5.3; 6.1; 6.3; 6.6; 6.7; 6.8; 6.10; 6.11; 6.12; 7.1; 7.2; 7.3; 8.2; 10.1; 10.3; 10.4; 10.5; 10.6; and 10.7.

General Principles

In support of OPG's proposed revisions to the Draft Issues List, OPG has identified three principles that should be applied by the OEB in developing the Issues List. These principles are addressed in turn below.

Issues Should Be Broadly Defined

Where there is a broader issue that captures the approval requested in OPG's application, sub-issues should not be included on the Issues List. In the OEB's Decision regarding

*Hydro One Bruce to Milton Transmission Reinforcement Project*¹, the OEB indicated that an Issues List has two purposes:

1) it defines the scope of the proceeding, and 2) it articulates the questions which the Board must address in reaching a decision on the application. The Board does not believe it is appropriate to define the Issues List in complete detail. For many of the issues, the Board expects that sub-issues will arise ... it is not possible to identify all of those detailed issues now so early in the process. The Board is therefore hesitant to include detailed sub-issues on the Issues List if the matters are otherwise included in a broader issue.

The OEB should continue to follow the sound approach articulated in *Bruce to Milton* in this proceeding.

Regulatory Matters Unrelated To The Application Should Be Addressed In A Separate Proceeding

A regulator should avoid adding to a proceeding issues or inquiries that are unrelated to the application before it (and more effectively considered in another proceeding) merely because some parties believe that the applicant's appearance provides a convenient forum for the unrelated matters to be heard. OPG has applied for payment amounts based on a cost of service methodology with a test period of 2011 - 2012. OPG has submitted evidence on all issues that are relevant to the determination of new payment amounts for 2011 - 2012 in accordance with the filing guidelines established specifically for this application by the OEB in EB-2009-0331. To introduce issues beyond the scope of OPG's application is both unfair and inefficient.

Issues Decided In The Last Payment Amount Hearing Should Not Be Reheard Absent Material Changes or Significant New Information

The OEB should not accept additions or changes to the Issues List where the issues proposed amount to a rehearing of issues that were decided in a previous proceeding, unless there have been material changes or there is significant new information. The OEB conducted a detailed review of and decided on many of the methodologies and regulatory treatments applied to establish OPG's payment amounts in EB-2007-0905. Where there have been no material changes or significant new information that would warrant the re-

¹ *Hydro One Bruce to Milton Transmission Reinforcement Project*, EB-2007-0050, September 26, 2007, p.2.

examination of those methodologies and treatments, the issue should not be reheard in this proceeding. To do so would be inefficient. If a party believed that a finding in the last hearing should have been reviewed and varied, the OEB has an established procedure to request review and variance.

Proposed Revisions

Issue 1.2: “Are OPG’s economic and business planning assumptions for 2011 - 2012 an appropriate basis on which to set payment amounts?”

OPG Position: OPG submits this issue should not be included on the Issues List. The proper focus for setting the payment amounts should be on OPG’s forecast costs and production. The facts and assumptions that give rise to these forecasts are subsumed and form part of each area that drives OPG’s revenue requirement. They do not exist separately in a manner that provides for discrete consideration. The establishment of economic and business planning assumptions for OPG’s business planning is the role of management and not the role of the OEB.

Issue 4.1 and Issue 4.4

OPG Position: Issue 4.1 and Issue 4.4 should be restated as follows:

Issue 4.1: “Do the costs associated with the regulated hydroelectric projects, that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery, meet the requirements of that section. ~~set out in O. Reg. 53/05? If not, were the additional costs prudent?~~”

Issue 4.4: “Do the costs associated with the nuclear projects, that are subject to section 6(2)4 of O. Reg. 53/05 and proposed for recovery, meet the requirements of that section. ~~set out in O. Reg. 53/05? If not, were the additional costs prudent?~~”

OPG believes that the specific reference to the relevant section of O. Reg. 53/05 provides greater clarity to these issues. The restated issue does not include the wording "If not, were the additional costs prudent?", since this question is subsumed within section 6(2)4. That section contemplates a prudency review by the OEB if the costs were not approved by OPG's Board of Directors prior to the OEB’s first order under section 78.1.

Issue 4.2 and Issue 4.5

OPG Position: Issue 4.2 and issue 4.5 should be restated as follows:

Issue 4.2: “Are the capital budgets ~~and/or financial commitments~~ for 2011 and 2012 for the regulated hydroelectric business ~~appropriate~~ reasonable and supported by business cases where specified in the Filing Guidelines established in EB-2009-0331?”

Issue 4.5: “Are the capital budgets ~~and/or financial commitments~~ for 2011 and 2012 for the nuclear business ~~appropriate~~ reasonable and supported by business cases where specified in the Filing Guidelines established in EB-2009-0331?”

In its evidence OPG has provided proposed capital budgets that relate, at least in part, to projects that will not come into service during the test period and will not be closed into rate base in that period. In accordance with the Filing Guidelines, OPG has provided business case summaries for projects in excess of \$10M or more in cost, where these business case summaries exist. Reference is made to EB-2009-0331 in the restated issue since the Filing Guidelines only specify provision of business case summaries in certain circumstances.

This evidence on capital budgets is presented to provide the OEB with an understanding of the basis of OPG's proposed capital spending for the test years. Those projects that will not come into service during the test period and will not be closed into rate base in that period do not form part of OPG's revenue requirement or impact the payment amounts sought for the test period. As noted previously by the OEB, in the case of projects forming part of a utility's capital budget in the test period but not forming part of rate base, the OEB's consideration is limited to the observation that the capital budget is reasonable.² As a result, expenditures on these projects are not subject to a review based on prudence.

OPG wishes to be clear that this issue should not be included if its inclusion is to provide an indirect means of subjecting projects that do not impact the test period payment amounts to a prudence review. As the OEB has recognized, prudence must be examined retrospectively. This can only be done once a project is complete and in service. OPG has

² Hydro One Networks Inc., Transmission Rates, EB-2006-0501, Decision with Reasons, p. 44.

replaced the word "appropriate" used in the Draft Issues List with the word "reasonable" to help clarify that it is not the OEB's intent to allow this issue on capital budgets to be used as an indirect attempt to require a prudence review in this proceeding for projects that are not otherwise subject to one because they will not come into service and be closed into rate base.

The reference to financial commitments has been deleted because, other than projects that are subject to section 6(2)4 of O. Reg. 53/05, OPG does not believe there are any specific implications of financial commitments in the context of an evaluation of the reasonableness of capital budgets.

Issue 5.2: "Is the estimate of surplus baseload generation appropriate?"

OPG Position: This issue should not be included on the Issues List because it is a sub-issue of Issue 5.1. OPG has requested approval of the production forecast for the regulated hydroelectric facilities. The forecast of surplus baseload generation is just one of the inputs used to determine that production forecast. All inputs used to determine the regulated hydroelectric production forecast can be reviewed under Issue 5.1.

Issue 5.4: "Are the estimates of fleet level uncertainty and forced loss rates for the individual nuclear plants reasonable?"

OPG Position: This issue should not be included on the Issues List because it is a sub-issue of Issue 5.3. OPG has requested approval of the test period production forecast for the nuclear facilities. Several inputs are involved in the determination of that production forecast including the planned outage schedule, forced production losses, unit capability targets, and fleet level uncertainty. All of the inputs can be examined under Issue 5.3.

Issues 6.2 and 6.4

OPG Position: Issue 6.2 and issue 6.4 should be restated as follows:

Issue 6.2: "Are the benchmarking results ~~and targets flowing from those results~~ for OPG's regulated hydroelectric facilities reasonable?"

Issue 6.4: “Are the benchmarking results ~~and targets flowing from those results~~ for OPG’s nuclear facilities reasonable?”

Benchmarking is a tool that can be used by the OEB as guidance in its consideration of OPG’s application. As such, any evaluation of OPG’s relative benchmarked position forms part of the OEB’s overall consideration of OPG’s costs and production forecast and could reasonably be considered part of those issues. OPG does not object to inclusion of these issues, however, because benchmarking has been a specific focus of the OEB’s inquiry. The setting of business targets for OPG is the responsibility of OPG’s management and not the OEB and is based on many factors including benchmarking. For this reason, OPG has removed the reference to targets from these issues.

The benchmarking issue specific to the nuclear facilities is considered in Issue 6.5.

Issue 6.5

OPG Position: Issue 6.5 should be restated as follows:

“Has OPG responded appropriately to the ~~observations and~~ recommendations in the benchmarking report?”

OPG submits that the focus of the issue should be the recommendations of the ScottMadden report. It is not the observations themselves, but the recommendations that flow from the observations, that are actionable.

Issue 6.9

OPG Position: Issue 6.9 should be restated as follows:

“Are the “Centralized Support and Administrative Costs” (which include Corporate Support and Administrative Service Groups, Centrally Held Costs and Hydroelectric Common Services) ~~and the allocation of the same~~ allocated to the regulated hydroelectric business and nuclear business appropriate?”

In EB-2007-0905, Issue 5.4 in the Issues List was: "Are the corporate costs allocated to the regulated hydroelectric and nuclear businesses appropriate?" The restated wording is preferred because it tracks the wording used in the last payments case and the issue has not, in substance changed. As restated, the issue more clearly captures the intent of the

issue which is whether the costs allocated to the regulated businesses and the allocation methodology itself are appropriate.

Issue 8.1

OPG Position: Issue 8.1 should be restated as follows:

~~“Is Has OPG appropriately applied the revenue requirement methodology for recovering nuclear liabilities in relation to nuclear waste management and decommissioning costs approved by the OEB in EB-2007-0905? appropriate? If not, what alternative methodology should be considered?”~~

This issue of nuclear liabilities was reviewed extensively in the most recent payment amounts proceeding. (EB-2007-0905, Decision with Reasons, pages 63 - 110). Based on that review, the OEB developed and approved its own revenue requirement treatment for the nuclear liabilities associated with Pickering and Darlington.³ In so doing, the OEB explicitly rejected requests that the approved methodology be labeled interim and that the OEB convene a consultation on this issue (EB-2007-0905, Decision with Reasons, page 91). The OEB went on to indicate that if other regulatory bodies issue decisions addressing asset retirement obligations prior to the next payment amounts proceeding, then OPG and other parties would have an opportunity to revisit the issue, but to OPG’s knowledge, no such external events have occurred to warrant revisiting this issue. (EB-2007-0905, Decision with Reasons, page 92).

Evaluating whether the OEB’s revenue requirement treatment will provide adequate revenues to meet OPG’s nuclear liabilities for Pickering and Darlington over the long lives of these obligations is a complex undertaking. As a result, for this application, OPG has based its requested payment amounts on the methodology established by the OEB.

This is a prime example of where the principle of not re-examining issues previously decided, absent a material change or significant new information, should apply. Given that the OEB reviewed and decided this issue in the most recent proceeding and that OPG has followed the OEB’s methodology in its application, there is no reason to reopen this issue in

³ The OEB’s Decision in EB-2007-0905 adopted a different treatment for nuclear liabilities associated with Pickering and Darlington than it did for the Bruce Facility (EB-2007-0905, Decision with Reasons, page 110). In calculating its proposed payment amounts OPG has also followed the GAAP-based treatment of Bruce nuclear liabilities approved by the OEB.

this proceeding by placing the choice of methodology, rather than its application, on the Issues List.

Issue 9.1: “Is the design of the regulated hydroelectric and nuclear payment amounts appropriate?”

OPG Position: This issue should not be included on the issues list because the matter was decided in the last proceeding. While OPG continues to believe that the nuclear payment amounts should include both fixed and variable components, it did not file evidence on this issue because the matter was decided and there was no material change in circumstances or significant new information to bring forward at this time.

Issue 9.2

OPG Position: Issue 9.2 should be restated as follows:

“Is ~~Has~~ the hydroelectric incentive mechanism encouraged appropriate operating decisions? If not, how should the incentive mechanism be modified?”

In the last proceeding the OEB reviewed and approved a new hydroelectric incentive mechanism and instructed OPG to report back on “the impact of the incentive structure on OPG’s operating decisions.” (EB-2007-0905, Decision with Reasons, page 55). In light of this background, the focus of the OEB’s inquiry in this proceeding should be on the operation of the approved hydroelectric mechanism. Only if that mechanism is found to be deficient, should modifications be considered.

Issue 10.2: “Is the proposed inclusion of costs related to Pickering B continued operations in the Capacity Refurbishment Variance Account appropriate?”

OPG Position: This issue should not be included on the Issues List because it is a sub-issue of Issue 10.1. Issue 10.1 examines the nature or type of costs recorded in all deferral and variance accounts, including the Capacity Refurbishment Variance Account.

Issue 11.1: “What reporting and record keeping requirements should be established for OPG?”

OPG Position: This issue should not be included on the Issues List. A proceeding on OPG's application for payment amounts is not the appropriate forum for establishment of reporting and record-keeping requirements. Evidentiary requirements with respect to this issue were not included in the Filing Guidelines established in EB-2009-0331 nor has OPG developed any evidence on this issue. Introducing this issue through the Issues List may lead to delays and inefficiencies in the proceeding as OPG may require an opportunity to prepare and file evidence.

To OPG's knowledge, the OEB has not previously established initial reporting and recording keeping requirements in a cost of service rates proceeding. In OPG's submission, a separate proceeding, as was conducted for the gas utilities and the electricity distributors, should be initiated if the OEB decides to consider reporting and record keeping requirements for OPG.

Issues 12.1 Through 12.4

Issue 12.1: "What incentive regulation formulations and options should be considered?"

Issue 12.2: "When would it be appropriate for the Board to establish incentive regulation, or other form of alternative rate regulation, for setting payment amounts?"

Issue 12.3: "What issues will require further examination to establish appropriate base payment amounts as the starting point for an incentive regulation or other form of alternative rate regulation plan?"

Issue 12.4: "What processes should be adopted to establish the framework for incentive regulation, or other form of alternative rate regulation, that would be applied in a future test period?"

OPG Position

Introduction

For the reasons provided below, OPG submits that none of these four issues should be included on the Issues List. Instead, the OEB should convene a proceeding to determine an appropriate alternative regulatory mechanism (ARM) for OPG, the information

necessary to implement the approved mechanism and the appropriate starting point for payment amounts based on the specific ARM selected. The ARM proceeding could commence soon after the issuance of the OEB's final order setting payment amounts for 2011 - 2012.

The OEB Has Already Determined How To Transition To An ARM

When the OEB was originally authorized to set payment amounts for OPG, it engaged in a wide-ranging consultation with OPG and other stakeholders about how best to undertake this new responsibility (EB-2006-0064). The result was a decision to proceed with a limited issues cost of service approach and transition to some form of incentive regulation mechanism in the future. The OEB's Report, A Regulatory Methodology for Setting Payment Amounts for the Prescribed Generation Assets of Ontario Power Generation Inc., EB-2006-0064, November 30, 2006, ("OEB's Methodology Report") stated:

The Board accepts staff's recommendation that in the longer term, the method for setting payments should be based on an incentive regulation regime. However, the Board considers that a full incentive regulation regime is in this case better implemented once the parameters of the incentive regulation formula (i.e., base payments, productivity and cost inflation factors) have been determined by a review of OPG's financial and cost data. (OEB's Methodology Report, page 1)

The OEB rejected a proposal to move directly to an incentive regulatory approach based on the payment amounts originally established by the Province in favour of a more orderly and thorough exploration of OPG's costs and the drivers of those costs. In discussing how to best achieve the adopted approach, the OEB stated:

The Board finds that, instead of using the existing payments as a base payment for the incentive regulation formula, the Board **will undertake a series of limited issues cost of service processes** to set the base payment. The Board will extend the limited cost of service process over **several payment orders** until all relevant issues have been examined. (OEB's Methodology Report, page 11) (emphasis added)

The OEB concluded its discussion on the regulation of OPG by stating its intention to adopt incentive regulation formula only once it was "satisfied that the base payment provides a robust starting point for that formula." (OEB's Methodology Report, page 11).

To date, the OEB has conducted a single review of OPG's cost of service. As would be expected in the initial review of a company with the size and complexity of OPG, some issues received substantial scrutiny in the initial proceeding, while others received less attention. In addition, in some areas, such as the treatment of OPG's nuclear liabilities, the

OEB adopted previously untested methods for cost recovery whose efficacy in meeting the requirements of O. Reg. 53/05 section 6(2)8 can only be determined over time. Other areas, such as the recovery of OPG's 2005 - 2007 tax losses, remain to be resolved. Against this backdrop, it would be both premature and inconsistent with the OEB's Methodology Report to jump to the issue of incentive regulation in this proceeding.

Instead, the OEB should continue in this proceeding to focus on examining OPG's costs and the factors that drive these costs. This is the appropriate focus for the regulation of a new segment of the electricity industry and the determination of a substantial component of the commodity costs paid by Ontario's electricity consumers.

Inserting Incentive Regulation Issues Into This Proceeding Would Be Inefficient And Unfair
OPG's application in this proceeding is based on the guidelines that the OEB established in EB-2009-0331, a consultation explicitly focused on "the filing requirements for Ontario Power Generation's ("OPG") next payment amounts application and the most efficient means by which issues and evidence might be reviewed and tested in the course of that proceeding." As part of that consultation, the OEB directed staff to draft a scoping paper "identifying the subject areas which will be reviewed at OPG's next payments proceeding and setting out the issues likely to arise." (Letter from Board Secretary to Parties to EB-2007-0905 and Other Interested Stakeholders, Ontario Power Generation Inc. – Consultation on Next Prescribed Payment Amounts Application, Board File No. EB-2009-0331, September 24, 2009) The OEB did not raise the issue of an incentive regulatory mechanism in the notice for the filing requirements consultation, the development of such a mechanism was not included in the staff scoping paper and was never discussed during the consultation itself.

Given the lack of any advance discussion of this issue in the specific forum that the OEB convened to consider the present hearing, it is not surprising that OPG did not file any evidence on this issue. Inserting this issue into the current payment amounts proceeding now, after OPG's evidence has been filed and the public notice issued without any mention

of an examination of the methodology for regulating OPG would be both inefficient and unfair.⁴

It would be inefficient to attempt to insert incentive regulation issues into this proceeding because the issues to be considered in determining a future regulatory mechanism for OPG are very different from those arising from OPG's cost of service application. The development of an ARM and the steps necessary to implement it are important issues that deserve focused consideration in a stand-alone proceeding. There are no particular synergies to be gained from including this matter in the current proceeding and doing so would diffuse the attention on OPG's payment amounts application.

Including incentive regulation issues would also cause delay. The need to file evidence on this issue would require the current schedule in the proceeding to be re-evaluated and a new schedule produced that included adequate time for OPG, and perhaps other parties, to prepare evidence on an ARM. Given the importance of this issue, it would take OPG several months to develop supplemental evidence. The preparation of any responsive evidence by OEB staff and other parties would further lengthen the proceeding. Given the range of potential issues related to an ARM, the discovery and hearing time associated with this proceeding would also expand significantly. These delays would inevitably create the need to establish interim payment amounts.

Addressing the future methodology for regulating OPG in this proceeding would also be unfair because this issue relates to a period outside of the test period in OPG's application. The process for establishing the methodology should be established in the context of the business environment that OPG's prescribed facilities will face over the next five years. This context is not considered in the current application, which extends only to the end of

⁴ The Notice for this proceeding did not include any indication of the intent to consider the methodology for regulating OPG. Several parties that participated in the original consultation on the methodology for regulating OPG (EB-2006-0064) have not intervened in EB-2010-0008. These parties are:

- . Low Income Energy Network
- . Toronto Hydro Electric System Limited
- . ECNG LP
- . Ontario Energy Savings LP
- . IESO
- . Bruce Power LP
- . Constellation New Energy Canada Inc.
- . Direct Energy
- . TransAlta Energy Corporation

2012. In a separate and subsequent proceeding on incentive regulation, properly noticed, OPG would be allowed the opportunity to provide the appropriate longer-range context necessary to inform any discussion about establishing an ARM.

A Separate Proceeding Should Be Convened To Determine The Appropriate Form Of ARM And How Best To Implement ARM

To eliminate the potential unfairness and inefficiency associated with adding incentive regulation issues into this proceeding, the OEB should initiate a separate proceeding to determine the future methodology for regulating OPG, the information necessary to implement that methodology and the appropriate starting point for incentive regulation.

As the OEB has previously determined, the logical sequencing for developing an ARM for OPG is to first determine the incentive mechanism to be used and then determine what information is necessary both to set an appropriate starting point for incentive regulation and to make adjustments under it. The OEB should proceed in the orderly fashion contemplated in the OEB's Methodology Report and approve the starting point for incentive regulation after it has heard and decided a proceeding to determine the specifics of an ARM for OPG.

Conclusion

For the reasons given above, OPG submits that issues related to the methodology for setting OPG's payment amounts should not be included on the Issues List, but instead should be considered in a separate proceeding. Inclusion of these issues would be inconsistent with the approach established in the OEB's Methodology Report, the consultation held on the scoping of the current proceeding and the Notice for this proceeding. Attempting to address these issues in the current proceeding would delay the proceeding, and dilute the focus on the matters raised in OPG's application and on the substantial issues to be decided in developing an ARM.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Charles Keizer
Counsel for the Applicant,
Ontario Power Generation Inc.

July 13, 2010