

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 REPLY 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 reply submissions of Ontario Power Generation Inc. ("OPG") in response to the submissions of AMPCO, Canadian Manufacturers and Exporters ("CME"), Consumers Council of Canada ("CCC"), Energy Probe, Pollution Probe, Power Workers Union ("PWU"), and School Energy Coalition ("SEC"). OPG notes that CME has chosen to use its delay in filing its initial comments to combine its initial comments with its reply to OPG's submissions. OPG expects that by doing so CME has forgone any further reply. OPG's submission is organized by issue so that the comments of all parties on an issue are addressed under that issue.

Reply Comments on Submission Related to General Principles

Introduction

In its opening submission, OPG put forward three general principles that should guide the development of the Issues List. These are: 1) issues should be broadly defined; 2) regulatory matters unrelated to OPG's Application should be addressed in separate proceedings; and 3) issues decided in the last payment amounts hearing should not be reheard absent material

changes or significant new information. OPG continues to believe that these principles are at the core of the development of an effective and efficient issues list for this proceeding.

CME, in particular, disputes OPG's general principles. The submissions below respond to the principles that CME would have the OEB apply as well as to CME's comments on OPG's general principles.

Response to CME's "Guiding Principles"

Relevance

CME argues that the "issues should be broadly defined and relevant to the Application." (CME Submission, page 5). In OPG's submission, the purpose of having an issues list is to determine what matters are to be decided in order to determine whether a particular line of inquiry is relevant to the OEB's determination. CME also claims that the OEB is obligated to revisit previously decided matters if they are relevant to the current Application and cites *Industrial Gas Users Association v. Canada* (National Energy Board), [1990] {F.C.J. 218; 43 Admin. L.R. 102; 19 A.C.W.S. (3rd) 1325} to support this proposition. OPG submits that the holding in that case is specific to the statutory requirements and factual circumstances found therein and does not, as CME suggests, stand for the broad principle that a regulatory tribunal must continually reconsider previously decided matters.

The decision in *Industrial Gas Users Association v. Canada* is readily distinguishable. In that case, the tribunal had applied as a generic policy a particular toll methodology. The court found that this methodology did not arise from a generic circumstance, but rather from a specific circumstance related to the particular application in which it was initially established. This, combined with the fact that the tribunal acknowledged the issue as relevant and the intervenor in question asserted that new circumstances had arisen, caused the court to reverse the tribunal's decision not to reconsider the toll methodology in its proceeding.

In the current proceeding, intervenors have sought to add issues so as to revisit decisions made by the OEB in the previous OPG payment amount proceeding. These decisions are particular to OPG and are not being applied in a generic manner and, as noted below, there is no material change in circumstances or significant new information since the last application, which would suggest the need for reconsideration.

Broad Issues

OPG agrees with CME that issues should be broadly defined, but disagrees with CME that this suggests that sub-issues are necessary or desirable. In OPG's submission, the reason to develop a broadly phrased issues list rather than a host of specific issues is to structure the proceeding around the major matters that require decision and avoid giving undue emphasis to any specific approach for resolving these major decisions.

Issues Previously Considered

The OEB has reviewed OPG's payment amounts once. In that review, it considered and decided a number of issues. For reasons of efficiency and regulatory certainty, the OEB should not revisit these issues absent significant new information or a material change in circumstances. CME suggests that the existence of these conditions can only be determined after the issue has been subject to the pre-hearing discovery process, but that is not the case. If the application itself does not disclose significant new information or a material change in circumstances, the parties suggesting that an issue be revisited have an obligation to make a *prima facie* case that establishes the existence of significant new information or a material change in circumstances. If they are unable to do so, there is no reason to review issues that were decided in the last proceeding.

Reasonableness and Prudence

CME suggests that the OEB must review the prudence of capital projects in order to assess the appropriateness of test period capital expenditures, even if they do not impact the determination of payment amounts for the test period. As discussed more fully below under Issue 4, OPG submits such a review is beyond the OEB's jurisdiction and, in any case, would not be sensible in the context of capital projects which do not impact the test period revenue requirement, like the Niagara Tunnel Project, which is the focus of intervenors submissions. It is important to note that for OPG, the OEB does not have the statutory mandate to evaluate projects and determine whether or not they should proceed as it would in a "leave to construct" proceeding. The OEB's jurisdiction is narrowly focused on determination of payment amounts for the prescribed facilities. Moreover, in the context of the Niagara Tunnel Project, a project which is in the middle of construction, there is no sensible reason to attempt a prudence review while the project's total cost and final performance are unknown.

Reply Comments to Submissions on Specific Issues

Issue 1

Under this issue, SEC makes the general proposal that the OEB rely on specific sub-issues for “drafting precision.” As noted in OPG’s opening submissions, the OEB should continue to follow the approach of defining issues broadly rather than bogging down the proceeding with numerous sub-issues.

SEC also suggests that the OEB should include new issues as follows:

Would the disclosure and treatment in the Application of the impact of the transition to International Financial Reporting Standards be consistent with the Report of the Board dated July 28, 2009 in EB-2008-0408, if that Report expressly applied to the Applicant? To the extent that there are any differences between the reporting from the Applicant and the reporting contemplated in the Board’s Report, what are those differences, and what steps, if any, should be taken to deal with those differences?

OPG urges the OEB to reject these additional issues. The OEB has already considered this matter and rejected SEC’s request in establishing the Filing Guidelines for this Application. SEC’s Letter of November 2, 2009 commenting on the proposed filing guidelines stated:

2.2.2 It is not clear from this what IFRS impact reporting will be required. In our view, for any material difference from Canadian GAAP to IFRS, the Applicant should identify the difference in the Test Years, and estimate the difference in each of the previous years being filed.

The OEB declined to require the information SEC requested. Instead, the Filing Guidelines state:

Forecasts for both 2011 and 2012 will be filed in either CGAAP or modified IFRS based format. If IFRS is used, OPG must identify financial differences and resulting revenue requirement impacts arising from the adoption of modified IFRS accounting in each affected year. (EB-2009-0331, Filing Guidelines for Ontario Power Generation Inc., page 8) (emphasis added).

OPG has exercised the option to file under CGAAP. As such, under the Filing Guidelines, OPG does not have any obligation to report on IFRS as requested by SEC. To obtain reconsideration of this issue, SEC attempts to frame the matter as a comparison between the treatment of OPG and the reporting required in the OEB’s Report on the IFRS consultation in EB-2008-0408. The Filing Guidelines for OPG were issued on November 27, 2009 some four months after the

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OEB's Report in EB-2008-0408 (issued July 28, 2009). Thus by the time that the Filing Guidelines were issued, the OEB was well aware of the reporting requirements coming out of the IFRS consultation for distributors and decided not apply them to OPG. In any event, SEC's issue is hypothetical since the OEB explicitly excluded OPG in its EB-2008-0408 Report. There are numerous differences between the scope of regulation applied to electric and natural gas distributors and that applied to OPG, a generation company that operates both prescribed facilities subject to regulation and non-prescribed facilities. This is one of them.

Furthermore, OPG does not have the information requested. Once the Filing Guidelines were issued and OPG decided to apply under CGAAP, it did not simultaneously undertake to develop revenue requirement information under IFRS. One of the reasons that OPG decided to file under CGAAP, rather than under IFRS as initially contemplated, was that it had become increasingly clear to OPG that timely accounting guidance for rate regulated entities would not be issued by the International Accounting Standards Board ("IASB"). To date, no such guidance has been issued, and the proposed guidance being reviewed by the IASB has been modified (i.e., guidance on transition to IFRS for rate regulated entities). Finally, irrespective of the outstanding guidance for rate regulated entities, certain of OPG's accounting policies and treatments under IFRS, which may impact OPG's regulatory, have not been finalized. The process of finalization of these policies involves ongoing procedures being performed by OPG's auditors.

Issue 2.2

OPG opposes AMPCO's proposed change to the wording of the draft issue relating to the Darlington Refurbishment Project. AMPCO suggests replacing the specific reference to OPG's proposal "to include CWIP in rate base" with a more general reference to "accelerated cost recovery." OPG has made a specific proposal and the OEB should evaluate that proposal on its merits. AMPCO has not provided any reason why the OEB should reject a straightforward statement of the issue in favour of a vague and ambiguous formulation.¹

¹ The phrase "accelerated cost recovery" could be construed to mean CWIP in rate base, but it could equally mean a shorter depreciation period for an asset entering rate base.

Issue 3

SEC suggests the OEB include a new issue as follows: “Should a formula be adopted by the Board to adjust the Applicant’s cost of capital for prescribed facilities annually and, if so, what should that formula be?”

OPG opposes this proposed addition to the Issues List. In the last payment amounts proceeding, the OEB’s findings stated that it “agrees that adoption of a formula approach to setting ROE is appropriate in the circumstances.” (EB-2007-0905, Decision with Reasons, page 162) The issue of whether the OEB should adopt a formula does not need to be revisited.

At the time of the last proceeding, the benchmark ROE formula applied by the OEB was the formula outlined in its Report on Cost of Capital and 2nd Generation Incentive Regulation. For 2011 and 2012, OPG has adopted the OEB’s Cost of Capital Report in EB-2009-0084 for determination of ROE. The Report states that the OEB “will apply the methods set out in this report annually to derive the values for the return on equity ... for use in cost of service applications” (EB-2009-0084 Report of the Board, page iii). As the OEB has adopted a new formula to be applied annually to cost of service applications such as OPG’s, there is no need to revisit this aspect of the OEB’s decision either.

Pollution Probe, like OPG, accepts Issue 3.3 as stated in the Draft Issues List. However, Pollution Probe states that “although the Board stated some intentions and expectations regarding the issue’s likely focus and development, those comments did not appear to be determinative in a final sense for this proceeding.” OPG is unsure what this means. The OEB made a finding in EB-2007-0905 that “there may be merit in establishing separate capital structures for the two businesses.” (EB-2007-0905, Decision with Reasons, page 160) The OEB then elaborated on how it intended to proceed, stating that:

In examining whether to set separate costs of capital, the Board intends only to examine whether separate capital structures should be set for the regulated hydroelectric and nuclear businesses. The Board expects that the same ROE would be applicable to both types of generation. This is consistent with the general approach of setting a benchmark ROE and recognizing risk differences in the capital structure.” (EB-2007-0905, Decision with Reasons, page 161) (emphasis added)

An examination of a different ROE for each specific technology would be inconsistent with the OEB’s findings, stated intentions and past practice of adjusting risk through changes in capital

structure. OPG submits that no changes are required to the Issues List, and that no further guidance is required to describe how the OEB intends to proceed on this issue.

Issue 4.2 and Issue 4.5

OPG continues to support the proposed revisions to the Issues List contained in its original submission. The purpose of those revisions was intended to clarify that the prudence of capital expenditures not coming into service in the test period, in particular the Niagara Tunnel Project, would not be reviewed at this time. SEC, CME and CCC take the opposite position. SEC, while characterizing its request for a “status update,” makes it clear that what it seeks is a prudence review the Niagara Tunnel Project in this proceeding. As SEC states:

On the other hand, the Board will at some point have to deal with the fact that the actual costs are coming in significantly higher than those in the Board of Directors approved budget. In our view the earlier this is looked at, the better. (SEC Opening Submission, page 2)

Initially, CME appears to be arguing against a prudence review of the Niagara Tunnel costs at this time stating:

The appropriateness or reasonableness of test period expenditures relating to multi-year capital projects cannot be examined without considering matters pertaining to the prudence of the entire project. (CME Opening and Reply Submission, page 2)

But then CME turns the matter on its head and states:

Matters pertaining to the prudence of multi-year projects fall inside, and not outside, the ambit of matters pertaining to appropriateness and reasonableness of test year expenditures on such projects. (*Id.*)

CCC states explicitly that the costs of the Niagara Tunnel Project should be considered in this proceeding even though the project will not come into rate base until after the test period.

AMPCO seeks only a status update. AMPCO also submits that the word “appropriate” should be retained in the issue statement but provides no rationale for this proposal.

If SEC, CME and CCC were actually seeking only a status update on the Niagara Tunnel Project, as is the case with AMPCO, there would be no dispute between OPG and these parties. OPG has filed the revised business case for the Niagara Tunnel Project and a status update in its evidence covering the test period activities anticipated for the project, its progress to date, and the budget and schedule to project completion. Subject to certain information being treated as confidential, OPG is prepared to discuss these issues at the hearing. The inquiry that

OPG believes is inappropriate in this proceeding is a prudence review of the project's cost and performance.

OPG's view remains that the costs of the Niagara Tunnel Project are not relevant to the discharge of the OEB's responsibility to determine payment amounts for the prescribed facilities in the test period because the project will not enter OPG's rate base during the test period. In addition, it would be unproductive to assess prudence in mid-stream when both the costs and the performance of the project are still unknown.

The OEB has established that prudence reviews are retrospective in nature. It is not possible for a retrospective review to occur with only partial information. If such a review were attempted, parties would have to embark on an exercise of conjecture as what the project's final costs and performance would be based on the information to date. A prudent project may be incorrectly found to be impudent because the projected result does not include all of the facts. Advancing a consideration of prudence on partial information is mere speculation as to future outcomes and is not a constructive exercise.

The OEB is an economic regulator and its jurisdiction must be considered having regard to the OEB's purpose, which stated generally is to regulate utilities to ensure that their services are properly and fairly provided to the public at rates that are just and reasonable to ratepayers and the utility. With specific reference to OPG, the OEB's jurisdiction is to set just and reasonable payment amounts for those facilities prescribed by regulation. However, this jurisdiction does not, either directly or by implication, put the OEB in the position of manager of the utility's affairs.

Undertaking a prudence review of the capital expenditures like those relating to the Niagara Tunnel Project, at this time, when these expenditures do not impact OPG's revenue requirement would effectively put the OEB in the position of managing OPG's affairs - choosing in advance those projects which should go ahead and those which should not be pursued or discontinued. Absent any impact on payment amounts, there is nothing in the legislation which would expressly authorize this sort of intervention.

Further, OPG submits that only in extraordinary circumstances could such intervention be required to fulfill the objects of the legislation. There are no such circumstances in this case. The capital expenditures while large, do not impact on OPG's financial viability or on the safe, reliable provision of electricity in the Province.

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In the OEB's Decision with Reasons dated November 3, 2008 in the first OPG payments case, the OEB noted that the Niagara Tunnel Project was not going to be completed in the test period and therefore the test period capital expenditures were not going to be included in rate base until some future date. The OEB recognized that the project was subject to continued delay and that its cost was at that time uncertain. It concluded that "no finding related to the cost is required because it is not forecast to enter rate base in the test period." (EB-2007-0905, Decision with Reasons, page 44) This finding is consistent with the interpretation of the regulatory scheme set out above.

Equally, in EB-2006-0501, the OEB came to a similar conclusion. In that case, Hydro One sought assurance from the OEB that certain capital development projects appeared to be necessary and that the associated costs appeared to be reasonable and prudent. Specifically, the OEB described the request as follows:

Hydro One classified the proposed Development projects on the basis of in-service date and the nature of the approval the applicant was seeking from the Board. Category 2 included six projects with in-service dates in 2009 and 2010. These projects do not require Board approval pursuant to section 92 (leave to construct), but will come before the Board again when the Company applies to include the costs associated with them in rate base. As these projects require significant spending in 2007 and 2008, the Applicant seeks assurance from the Board that the projects appear to be necessary, and the costs of the projects appear to be reasonable and prudent. (EB-2006-0501, Decision with Reasons, page 42)

In addressing Hydro One's request, the OEB cited the concerns raised by VECC in relation to the assurance sought:

Regarding the Category 2 projects, including Claireville/Cherrywood, VECC was concerned with Hydro One's desire for assurance from the Board that "the capital program that the company is proposing is an appropriate approach, subject to coming back later to demonstrate to you that the costs have been reasonable and prudently incurred. VECC submitted that the Board should not grant this assurance and that any such conclusion should be no more than an observation that the projects are reasonable." (EB-2006-0501, Decision with Reasons, page 44-45)

Concurring with VECC, the OEB denied Hydro One's request, providing the following explanation for the denial:

The Board agrees with VECC. The costs of these projects will be subject to approval in a future proceeding.... As Hydro One will be returning in 2008 for a 2009 test year application, the Board expects to see updates and progress reports on all those projects at that time, for final scrutiny and consideration of approval of the inclusion of these amounts in rate base. For discretionary projects, the Board expects Hydro One to

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quantify the reliability and other benefits of the projects. (EB-2006-0501, Decision with Reasons, page 45) [Emphasis added.]

For the reasons set out in OPG's submission in EB-2009-0331, the OEB should not conduct a prudence review at this time because such a review is unnecessary and impractical for the reasons previously stated.

Issues 6 – Operating Costs

SEC makes a number of submissions in this area, some of which relate to specific issues on the Draft Issues List while others appear to seek the addition of new sub-issues. For the reasons provided below with respect to each SEC proposal, OPG believes that no changes to its original submission are warranted.

SEC requests an issue be added to address the fact that the OEB declined to establish a variance account for OPG's Regulatory Affairs costs in the last payment amounts proceeding and the OEB's rejection of the SEC request to examine OPG's 2010 costs in EB-2009-0174 (Accounting Order for 2010). OPG's Regulatory Affairs costs for the test period form part of OPG's corporate cost and can be reviewed under Issue 6.9 discussed below. A review of 2010 costs has already been rejected by the OEB and would serve no purpose since the prohibition against retroactive ratemaking would prevent the OEB from adjusting the 2011-2012 payment amounts on the basis of prior period costs.

SEC also seeks to re-litigate its proposals from the last payment amounts proceeding that the costs approved for Pickering A be based on benchmarking and that OPG be required to file a plan demonstrating the long-term viability of Pickering A. The OEB rejected these requests in the last payment amounts proceeding stating: "[T]he Board agrees with OPG that the Board's role in this application is to review the proposed costs of the prescribed facilities and to order reasonable payment amount." (EB-2007-0905, Decision with Reasons, page 28) OPG submits that this role has remained unchanged and that the Draft Issues List, as revised by OPG's submissions, provides the full scope necessary to effectively and efficiently fulfill the role previously articulated by the OEB with respect to Pickering A. SEC's proposed additions to the Draft Issues List in this area should be rejected.

Issues 6.2 and 6.4

CCC did not propose any specific revisions to the wording of these issues, but suggests that the underlying issue is "to what extent the benchmarking results should be used in determining

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OPG's overall revenue requirement.” OPG submits that OPG’s payment amounts should be determined based on its forecast cost and production. While benchmarking can help the OEB assess the reasonableness of OPG’s forecasts, it cannot be used as a substitute for an evaluation of OPG’s forecast costs and production. Similarly, AMPCO’s proposed rewording does not focus on the use of benchmarking in an evaluation of forecast costs and production. OPG’s proposed wording on these issues appropriately captures the use of benchmarking in assessing reasonableness of OPG’s forecasts.

Issue 6.9

SEC has proposed a long and unnecessarily complex formulation of what is essentially a straightforward issue: whether the costs allocated to the regulated businesses and the allocation methodology itself are appropriate. OPG’s proposed wording fully captures this issue and should be adopted. OPG’s proposed wording also is consistent with CCC’s submission that the issue should include an assessment of both the level of allocated costs and the methodology used to allocate them.

Issue 7

This is another instance where SEC seeks to re-litigate the OEB’s rejection of its position in the last payment amounts proceeding. In that proceeding, the OEB agreed with OPG that Congestions Management Settlement Credits are not incremental revenues, but are instead compensation for the lost revenues and un-forecast costs of operational changes imposed by the IESO to address system constrains. The OEB found that:

The losses which OPG incurs in constrained on and constrained off situations are mostly related to opportunity costs – the reduced production or less efficient production which results in lost revenues. The Board accepts OPG’s evidence that the CMSC payments are designed to compensate for these losses – losses which are not otherwise incorporated into the revenue requirement.” (EB-2007-0905, Decision with Reasons, page 50)

SEC points to no new circumstances that would warrant revisiting this issue, because none exist. The OEB should reject the requests by SEC to add this matter to the Draft Issues List.

Issue 8.1

SEC, CME and AMPCO seek a broad formulation of this issue that would permit re-examination of the methodology for determining the revenue requirement associated with OPG’s nuclear

liabilities. SEC goes further and proposes that the OEB examine the consequences of a new Reference Plan that will not be in place for more than a year. OPG's submission, on the other hand, proposes that this issue be drafted to focus on the application of the methodology that the OEB adopted in the last payment amount's proceeding after extensive consideration of this issue.

SEC and Energy Probe request an inquiry into the impacts of a new Reference Plan. This question should not be added to this proceeding because the issue is not ripe for evaluation. OPG continues to operate under the existing Ontario Nuclear Funds Agreement Reference Plan until a new Reference Plan has been reviewed and approved by the Province of Ontario. This is not expected to occur until at least December of 2011 as this process is currently in its early stages. In these circumstances there is no profitable inquiry that can be undertaken now.

In EB-2007-0905, the OEB approved two deferral accounts to cover the revenue requirement impacts of changes to OPG's nuclear liabilities arising from a change in the approved Reference Plan. For prescribed facilities, these impacts are covered by the Nuclear Liability Deferral Account, per Section 5.2 of O. Reg. 53/05. For the Bruce facilities the impacts are captured in Bruce Lease Net Revenue Variance Account. (EB-2007-0905, Decision with Reasons, page 112). The existence of these accounts will provide parties with an opportunity to review the revenue requirement impacts of changes to the approved Reference Plan as part of the OEB's examination of deferral account balances in a future proceeding.

SEC further requests an examination of whether OPG has reached the threshold for nuclear used fuel liability. This question from SEC is formulated in the form of an interrogatory and does not propose an issue to be decided in determination of the payment amounts. OPG submits that SEC's proposal should not be included on the Issues List.

Both SEC and CME recognize that the OEB clearly stated in the last payment amounts proceeding that the issue of methodology for determining the revenue requirement associated with OPG's nuclear liabilities would be revisited if other regulatory bodies issued decisions addressing the treatment of asset retirement obligations (ARO). CME states that the OEB should not rely on OPG's "bald assertion" that no such decisions have been issued to OPG's knowledge, but should instead allow CME to embark on voyage of exploration to determine whether OPG has appropriately canvassed all potential regulatory bodies. (CME Submission, page 2) OPG notes that, other than CME's desired inquiry of OPG, nowhere does CME indicate

that it is aware of any such decisions or that it has made even a preliminary search to find them. OPG submits that it should not be required to attempt to prove a negative.

SEC's attempt to assert that the nuclear liability methodology should be revisited because of new information is not correct. SEC claims that: "At least one such external change – IFRS – has taken place..." (SEC Submission, page 4) However, IFRS has no bearing on this issue unless and until it is used to set payment amounts. Since OPG has filed this application on a CGAAP basis pursuant to the Filing Guidelines, the adoption of IFRS is not "an external change" that should trigger a reassessment of the recovery methodology for OPG's nuclear liabilities. SEC also states that asset retirement obligations have been considered at FERC, but does not cite any FERC decision addressing this matter because, to OPG's knowledge, there have been no developments at FERC with respect to AROs since the last payment amounts proceeding. Similarly, AMPCO states that the development of relevant precedents "appears to have occurred," but cites none. (AMPCO Submission, page 2).

Issue 9.2

SEC proposes a cumbersome formulation of what is a relatively straightforward issue. The OEB should adopt the language in OPG's initial Submission ("Has the hydroelectric incentive mechanism encouraged appropriate operating decisions? If not, how should the incentive mechanism be modified?"), which fully covers the matter.

SEC also proposes an issue addressing mitigation under this heading. Mitigation is fully discussed below under CME's proposed Issue 13. For the reasons provided there, the OEB should reject SEC's proposal on mitigation.

Issue 10

SEC offers a number of proposed changes under this issue which are addressed below in the order of SEC's submission. SEC first proposes a sub-issue addressing the tax loss variance account. As this matter is fully covered by the general variance account issues under heading 10 of the Draft Issues List, SEC's proposed sub-issue is unnecessary and should be rejected for the reasons provided in the General Principles discussed OPG's initial Submission.

SEC next proposes separate consideration of an issue related to the benchmark tax expense used as the baseline to measure variance in the Income and Other Taxes Variance Account. OPG submits this question is captured under existing issue 10.1.

In sub-paragraph c,” SEC appears to be seeking to add issues to address the OEB’s rejection of SEC’s positions in EB-2009-0174 (Accounting Order for 2010). In that proceeding, the OEB accepted OPG’s proposals on how to address the variance and deferral accounts for 2010, stating: “The Board finds that the proposed treatment is acceptable. In each case, the entries will be derived using the same underlying forecasts and methodologies as were used to set the current payment amounts.” (EB-2009-0174, Decision with Reasons, page 7) Review of OPG’s application of these methodologies is fully encompassed by the general issues under this heading in the Draft Issues List rendering SEC’s proposal unnecessary.

SEC made a specific request to review 2010 earnings in the EB-2009-0174 (Accounting Order for 2010) proceeding. The OEB rejected it. (EB-2009-0174, Decision with Reasons, page 8) SEC makes essentially the same request here in sub-paragraphs “d” and “e” under the guise of a variance account review. For the reasons given above, the Draft Issues List fully covers the appropriate review of OPG’s variance and deferral account and SEC’s attempt to use this review to examine 2010 earnings should be rejected. As is also explained above, a general review of 2010 earning is precluded by the prohibition against retroactive ratemaking.

Finally in sub-paragraph “f,” SEC proposes an addition to issue 10.5 to account for the possibility that the OEB may choose to change the terms of the existing variance and deferral accounts in approving there continuation. This addition is unnecessary as it is beyond dispute that the OEB in approving variance and deferral accounts, whether new or continued, may change their terms prospectively.

Issues 12.1 Through 12.4

OPG has made extensive submissions on these issues and nothing in the submissions of other parties has caused any change in OPG’s stated positions. These submissions will not be repeated in reply. Instead, OPG will focus its reply on the specific suggestions of the parties advocating inclusion of these issues.

SEC urges the retention of these issues on the Issues List on the basis that the OEB must determine in this proceeding whether the payment amounts represent a robust starting point for incentive regulation. (SEC Submission, page 7) SEC’s proposed process reverses the logical order for developing an alternative regulatory mechanism (ARM) for OPG as explained in

OPG's initial submissions.² Once the OEB has decided this Application, it should convene a new proceeding to decide on an ARM for OPG and then, based on the mechanism selected, determine what information is necessary to implement it and an appropriate starting point. There is no benefit to anyone of allowing these important ARM matters to divert the focus of this proceeding, which has the equally important task of setting payment amounts for the test period. SEC offers no persuasive reason why these issues should be considered in this proceeding rather than in a proceeding focused on development of an ARM.

CME urges a reworded issue so that it may pose interrogatories about matters on which OPG has not submitted any evidence and has not developed a position for the purpose of resolving these matters in a settlement conference. OPG submits that contrary to the position of CME, a more effective regulatory approach would be for the OEB to convene a properly noticed proceeding to develop an ARM process and issue a decision based on the evidence presented in that proceeding.

AMPCO, CCC and PWU support OPG's view that the issues of an alternative methodology should not be examined in this hearing. CCC and AMPCO propose that the issue of the process for determining an alternative methodology could be in the subject of submissions for final argument. OPG continues to believe that convening a new properly noticed proceeding to consider ARM is the correct approach. Submitting argument on an issue on which there is no evidence in the hearing is not an efficient or effective way to commence consideration of this important issue.

Additional Issues

CME proposes an issue 13 on Consumer Impacts and Affordability with associated sub-issues as follows:

13.1 Are the consumer impacts of OPG's plans appropriate?

13.2 What measures for evaluating consumer impacts and affordability are appropriate?

13.3 What measures to reduce consumer impacts and to enhance affordability are appropriate? (CME Submission, page 3)

² OPG uses the term ARM to emphasize its view that the range of potential approaches goes well beyond the "price cap" incentive ratemaking mechanisms approved for electricity and natural gas distributors.

OPG opposes inclusion of these issues for the following reasons. First, consideration of impacts occurs after the completion of the task before the OEB – to set just and reasonable payment amounts. Only when the OEB has decided all of the issues and determined the resulting payment amounts does it consider the necessity, if any, for mitigation. It is for this purpose, as well as for transparency and completeness, that OPG has filed evidence at the end of its Application on the impacts of its proposal.

The OEB has established procedures to determine whether the just and reasonable rates it approves create impacts which require mitigation and, if so, how that mitigation should occur. In this case, the consumer bill impact of granting OPG's entire request would be an annualized increase for a typical residential consumer of 1.7%. This is far below the OEB's established threshold for mitigation.

With regard to CME's specific proposed sub-issues, OPG submits that none of them are necessary. Issue 13.1 "Are the consumer impacts of OPG's plans appropriate?" is not clear. Once just and reasonable rates have been determined by the OEB, the impacts are what they are and the only remaining issue is any need for mitigation. Issue 13.2 is similarly opaque in that it is impossible to determine what is meant by affordability and how this would be measured for consumers in aggregate rather than individually. Finally, if Issue 13.3 is an oblique reference to the potential for mitigation, this issue is unnecessary because the OEB already has well-established threshold for determining this matter and the impacts of this Application are far below that threshold.

SEC proposes a related issue on mitigation under Issue 9.2. For the reasons provided above in response to CME's proposals, SEC's proposal should be rejected.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

[Original signed by]

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