

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;

AND IN THE MATTER OF Rule 5 of the Rules of Practice
and Procedure of the Ontario Energy Board.

**SUBMISSION OF THE POWER WORKERS' UNION ON ONTARIO POWER
GENERATION INC.'S MOTION FOR AN ORDER TO EXCLUDE EVIDENCE FILED
BY STAFF OF THE BOARD**

OVERVIEW

1. These are the submissions of the Power Workers' Union ("PWU") in respect of Ontario Power Generation Inc.'s ("OPG") motion for:
 - a. An Order excluding from this proceeding the evidence filed by staff of the Board ("Board Staff") on August 31, 2010, being a report prepared for the Board by Power Advisory LLC titled "Update to Report on Methodologies for Setting Ontario Power Generation Payment Amounts" (the "Power Advisory Report");
 - b. An Order excluding from this proceeding all interrogatories and responses to those interrogatories asked in respect of the Power Advisory Report; and,
 - c. An Order prohibiting the attendance of the authors of the Power Advisory Report as witnesses in this proceeding on the matters raised in the Power Advisory Report as suggested in the Board Staff's letter dated August 31, 2010.

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2. The PWU supports OPG's motion and submits that the Board should grant the relief sought therein because:
- a. The Board in its decision on the issues list for this proceeding accepted that an Incentive Regulation Mechanism ("IRM") for OPG would not result from this hearing, and further that it did not wish to trigger the filing of extensive expert evidence, or otherwise see disproportionate amounts of hearing time spent on this issue. The Board therefore, excluded the following draft issues 12.1 and 12.3 from the final issues list:
 - i. Draft Issue 12.1 - What incentive regulation formulations and options should be considered?
 - ii. Draft Issue 12.3 – What issues will require further examination to establish base payment amounts as the starting point for an incentive regulation or other form of alternative rate regulation plan?
 - b. Section 3 of the Power Advisory Report, "Overview of Methodologies for Setting Payment Amounts", is described in the report as a review of "three principal methods for establishing payments for regulated utility assets". Section 3 clearly addresses draft issue 12.1, and is therefore out of scope for this proceeding.
 - c. Section 4 of the Power Advisory Report, "Implementation Considerations for COS and IRM Methodologies", is described in the report as containing Power Advisory's assessment of the "various methodologies for establishing payment amounts for the prescribed assets and discussions on actions that the Board could take to set the stage for implementation of a more comprehensive IRM approach in the future". Section 4 clearly addresses draft issue 12.3, and is therefore out of scope for this proceeding.
 - d. The remaining sections (section 1 – Introduction and Purpose; and, section 2 – Regulation of OPG Prescribed Assets) of the Power Advisory

Report set the context for sections 3 and 4 and are therefore implicitly related to draft issues 12.1 and 12.3 and out of scope for this proceeding.

- e. The issues that are in scope are issues 12.1 and 12.2 in this proceeding and are as follows:
 - i. Final Issues List - Issue 12.1 - When would it be appropriate for the Board to establish incentive regulation, or other form of alternative rate regulation, for setting payment amounts?
 - ii. Final Issues List - Issue 12.2 - 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?
- f. With the exception of references on pages 6 and 12 to the Board's EB-2006-0064 report "A Regulatory Methodology for Setting Payment Amounts for the Prescribed Generation Assets of Ontario Power Generation Inc."¹, which indicated that the Board will implement an incentive regulation ("IR") formula when it is satisfied that the base payment provides a robust starting point for that formula, the Power Advisory Report does not address issues 12.1 and 12.2 of this proceeding.

THE FACTS

- 3. The PWU accepts the chronology of facts as set out in the factum submitted by OPG on the motion as accurate.

EB- - Board Report. A Regulatory Methodology for Setting Payment Amounts for the Prescribed Generation Assets for Ontario Power Generation Inc. November , .

ISSUES AND ARGUMENT

4. Board Staff's filing of expert evidence, the Power Advisory Report, which deals with IR formulations and options, and implementation considerations for Cost of Service and IRM methodologies was unexpected given that the Board in its decision on the Final Issues List had narrowed the scope on alternative regulatory mechanisms and IRM to issues 12.1 (draft issue 12.2) and 12.2 (draft issue 12.4), and excluded draft issues 12.1 and 12.3 on the substance of alternative mechanisms from this proceeding.
5. Consistent with OPG's position set out in item (p) of its ground for motion, the PWU would have filed extensive expert evidence if the Board had included draft issues 12.1 and 12.3 on the Final Issues List.
6. Board Staff's August 31, 2010 cover letter states that the Power Advisory Report is filed in relation to issues 12.1 and 12.2 in this proceeding. It is unclear, what purpose Board Staff's expert evidence serves in this proceeding, given that neither Issue 12.1, nor Issue 12.2 are addressed in the Power Advisory Report.
7. If the Board denies OPG's motion and allows Board Staff's expert evidence and interrogatory responses, and cross examination of the authors of the Power Advisory Report to remain on the record, it raises the question as to what the Board is to actually decide with regard to the substantive matters covered in the Power Advisory Report. If the Board in any way considers the substantive matters addressed in the Power Advisory Report, on which only Board Staff had the opportunity to file expert evidence, it will have created an unequal playing field for stakeholders, inconsistent with fundamental regulatory principles.
8. The PWU made a significant investment in its participation in EB-2006-0064, taking a lead role in forwarding the position that the OEB ought to gain a good understanding of issues related to OPG's costs through cost of service regulation before embarking on the issue of alternative methods of regulating OPG. The PWU has also actively participated in the Board's consultations and proceedings on IRM for both the gas and electricity distribution sectors, ever since the Board first embarked on IR with its consultation on first generation performance-based

regulation for electricity distributors in 1999. In many of those consultations the PWU filed expert evidence that supported IRM that provides a win-win approach for consumers and regulated entity alike, and that explicitly considers the maintenance/improvement of service quality and reliability within the IR framework. Allowing the Board Staff the opportunity to file expert evidence on the substance of an IRM framework for OPG in a proceeding where the Board has ruled it out of scope, deprives the Board of valuable input from interested parties, such as the PWU that have invested significantly in building up expertise on IRM to ensure that their contribution serves the public interest.

CONCLUSION

9. In conclusion, it is submitted that OPG's motion should be allowed.

All of which is respectfully submitted.