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By electronic filing and by e-mail

December 7, 2010

Kirsten Walli, Board Secretary
Ontario Energy Board
27th floor – 2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms Walli,

Ontario Power Generation Inc. ("OPG") 2011-2012 Payment Amounts Application
Board File No.: EB-2010-0008
Our File No.: 339583-000064

In the rush to get our Argument filed before midnight yesterday, we failed to catch a few typographical errors. They are as follows:

- Table of Contents – item XI. Design Payment Amounts should read "Design of Payment Amounts
- Page 11, para.42, line 2 – delete the last word "transmission"
- Page 25, para.91, line 2 – there should be a comma after the word "number"; line 6, the phrase "what the Board's suggesting in its …" should read "what the Board is suggesting, in its …"; line 8, there should be a comma after the word "Ontario"
- Page 26, para.94, line 3 – the word "any" should read "the"
- Page 34, para.121, last line – the word "unlikely" should read "likely"
- Page 34, para.122, line 3 – the phrase "economic feasibility" should read "economic feasibility analysis"
- Page 48, para.174, 4th last line – the word "access" should read "assets"
- Page 53, the topic heading "Design Payment Amounts" should read "Design of Payment Amounts"
- Page 63, para.235, the introductory words "The summary" should read "In summary,"
- Page 63, para.236, line 4, the phrase "we support the submission" should read "we submit"

We attach a corrected version of the document.

Yours very truly,

Peter C.P. Thompson, Q.C.
PCT\slc
enclosure
c. Barbara Reuber (OPG)
Intervenors EB-2010-0008
Paul Clipsham
OTT01\4301019\1

EB-2010-0008

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.

CORRECTED
ARGUMENT OF
CANADIAN MANUFACTURERS & EXPORTERS ("CME")

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I. OVERVIEW

1. Ontario Power Generation Inc. ("OPG") asks the Board to approve revenue requirement amounts of $1,435.7M for hydroelectric and $5,473M for nuclear for the two-year test period between January 1, 2011 and December 31, 2012. These revenue requirements and resulting payment amounts of $37.38 per MWh for hydroelectric and $53.34 per MWh for nuclear are proposed to become effective March 1, 2011.

2. In addition, OPG asks the Board to approve various debit and credit deferral account balances having a net credit amount for hydroelectric of $45.8M and a net debit balance for nuclear of $692.5M. OPG seeks to clear the entire credit balance for hydroelectric and $459.9M of the $692.5M of nuclear debit balances recorded in deferral accounts over 22 months, commencing March 1, 2010. The remainder of some $232.6M is proposed to be recovered in the 24 months between April 1, 2012 and March 31, 2014.

3. Over and above these sums, OPG asks the Board to approve a deferral account for collection in years beyond the test period for estimated test period pension/OPEB cost increases of $264.2M.

4. We estimate that if all of the amounts OPG asks the Board to approve were recovered during the 24-month test period, then the percentage increase over the status quo payment and rider amounts for hydroelectric and nuclear would be materially more than the 9.6% reflected in the presentation OPG made to Stakeholders in the Spring of 2010. OPG's proposal recovers some $500M of proposed deferral account balances in periods beyond the test period, which reduces the requested recoveries in the test period to a 6% increase over the status quo. The approach of postponing some $500M of recoveries for collection in years following the test period does not represent any cost reductions. It just masks the reality of the enormity of OPG's claims.

5. The significant increases embedded in OPG's application are even more startling if one considers that the proposed nuclear revenue requirement reflects a $197.1M

reduction that is not the result of any cost constraint measures, but is merely the accounting result on nuclear liabilities on the decision to refurbish Darlington. Mr. Shepherd for the Schools Energy Coalition ("SEC") makes this point in the draft of his argument that we have reviewed. Mr. Shepherd calculates that the real measure of cost increases embedded in OPG's application, derived by taking existing payment amounts and rider amounts for hydro and nuclear, respectively, and comparing them to the hydroelectric and nuclear payment amount and matters that would ensue if all costs being claimed by OPG were recovered during the course of the test period, would exceed 20%, if one recognizes that the $197.1M revenue requirement reduction attributable to the Darlington refurbishment decision does not represent any real cost reductions.

6. OPG seeks these significant increases at a time when consumers are experiencing and facing very significant year over year increases in their electricity bills.

7. Safe, reliable and cost effective ownership and operation of OPG's regulated assets is critical to Ontario electricity consumers and the viability of the Ontario economy because OPG uses its regulated assets to supply about 48% of total Ontario electricity demand.[1] Conversely, the viability of OPG and the Ontario economy is very much dependent on the ability of all Ontario electricity consumers to cope with the steep electricity price increase environment in which they find themselves.

8. In these circumstances, we would expect that those responsible for developing OPG's business and spending plans would be particularly sensitive to the adverse effect electricity price increases are having on consumers. To our dismay, any sensitivity of that nature is conspicuous by its absence. Those managing OPG tell us

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[1] See OPG's Argument-in-Chief, p. 1.

that the total bill impacts on consumers do not need to be, and are not, considered in OPG's planning process.[2]

9. Moreover, we are told the electricity price increases that consumers are experiencing are irrelevant to the Board's consideration of OPG's application. OPG argues that the Board would be acting illegally if it takes the total electricity price environment facing consumers into account when assessing the reasonableness of OPG's spending plans. As far as OPG is concerned, the only thing that matters is the cost of their needs. OPG's position is that if it has a need, then the Board is obliged to allow it to recover the reasonable costs of satisfying that need in its regulated rates. According to OPG, the Board is only permitted to consider the impact of their increased needs on total electricity bills when assessing the reasonableness of OPG's spending plans. We are told that it would be both unfair and a legal error for the Board to disallow any portion of OPG's spending plans to reflect effects on total electricity bills not caused by OPG.[3]

10. This astonishingly myopic view of utility regulation is incompatible with the express provisions of the *Ontario Energy Board Act, 1998* (the "*OEB Act*")[4] which require the Board to exercise its rate-making responsibilities in a manner that protects consumers with respect to electricity prices. OPG's position is also contrary to prior Board decisions and a recent Ontario Court of Appeal decision.[5]

11. The only evidence filed in this proceeding that describes the price increase environment electricity consumers are facing and experiencing is the analysis provided

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[2] Transcript, Volume 15, p. 13.

[3] OPG's Argument-in-Chief, p. 5.

[4] *Ontario Energy Board Act, 1998*, S.O. 1998, Chapter 15, Schedule B, as amended.

[5] See *Toronto Hydro-Electric System Limited v. Ontario Energy Board*, ONCA 284 at para. 50 [leave to the Supreme Court of Canada denied]; and Hydro One Distribution, EB-2009-0096, Decision with Reasons, April 9, 2010, p. 13.

by Bruce Sharp of Agent Energy Advisors at the request of CME.[6] Based on his analysis, Mr. Sharp concluded that over the next five years, non-residential electricity consumers could expect to see their total unit costs rise by between 47% and 64% over the increase already experienced in 2010. This is equivalent to an average annual compounded increase of 8.0% to 10.0%.[7]

12. Mr. Sharp concluded that residential consumers would likely see their total unit costs rise between 38% and 47% over the next five years, which translates into an average annual compounded increase of between 6.7% and 8.0% over the significant increase already experienced in 2010.[8] Most electricity consumers have already experienced a 15% to 20% increase in their total bills in 2010. The typical monthly residential consumer bill as of June 27, 2008 was $111.63.[9] Less than two years later, on February 5, 2010, that same customer's bill increased to $133.08.[10] This represents an increase of 19.2%.

13. The credibility of Mr. Sharp's estimates is reinforced by the price projections contained in the government's recently published Long-Term Energy Plan ("LTEP").[11] The government forecasts that residential customers are facing a 47% increase over the next five years. The government's industrial price projections, which may only be a subset of the consumers Mr. Sharp classifies as non-residential, shows total unit prices increasing from about $80 per MWh to about $112 per MWh over the next five years for an overall increase of about 53% in the next five years.[12]

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[6] Exhibit M, Tab 5, Schedule 1

[7] Exhibit M, Tab 5, Schedule 1, p. 7.

[8] Exhibit M, Tab 5, Schedule 1, p. 8.

[9] Exhibit K9.5, Tab 14.

[10] Undertaking J14.6, Attachment 1.

[11] Exhibit K16.3.

[12] Exhibit K16.3, p. 59.

14. Manufacturing is a core component of Ontario's economy. For manufacturers, Ontario's electricity prices are now greater than the electricity prices available to their competitors in other jurisdictions. A large proportion of manufacturers represented by CME are "price takers". If care is not taken in managing the year over year increases in electricity prices, then these manufacturers will likely leave Ontario.

15. The government's recently announced Ontario Clean Energy Benefit ("OCEB") does little, if anything, to alleviate the electricity price increase pressures facing Ontario manufacturers. CME estimates that between 75% and 85% of its members are too large to qualify for the OCEB, and too small to qualify for benefits the government has made available to help large industrial consumers cope.

16. The government's Background Papers announcing the introduction of the OCEB states that:

> **"The province's revenues from its ownership of Ontario Power Generation and Hydro One are projected to be approximately the same as the cost of the OCEB."**[13]

17. It is unfortunate that the government chose to allocate the return and related tax that it receives from OPG and Ontario Hydro in the manner that it did, because the effect is to deprive those electricity consumers who neither qualify for the OCEB nor the programs that benefit large industrials of any electricity price relief. Had the government simply chosen to waive its recovery of some or all of its return and related taxes being recovered from OPG and Hydro One in their regulated rates, and concurrently challenged the municipally owned utilities to do the same, then electricity pricing relief would flow to all electricity consumers through their Board-regulated rates. Manufacturers and others ineligible for either the OCEB or the programs for large industrials would not find themselves so disadvantaged. The government's failure to

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[13] *Ontario Economic Outlook and Fiscal Review 2010*, p. 15 (http://www.fin.gov.on.ca/en/budget/fallstatement/2010/paper_all.pdf)

adopt an equitable allocation approach of the type that the Board applies when it establishes utility rates leaves the bulk of Ontario manufacturers facing electricity price increases of between 47% and 64% over the next five years.

18. We urge the Board to be acutely aware of the situation facing manufacturers and others who do not qualify for either the OCEB or electricity costs saving programs available to large industrials when it evaluates the overall reasonableness of the revenue requirement and deferral account amounts OPG seeks to recover.

19. We further urge the Board to accord a very high priority to its electricity price protection mandate when scrutinizing OPG's application. The Board's power to respond to the significant price increase environment facing consumers currently and over the next five years is far broader than OPG postulates. The range of available regulatory responses includes one or more of the following:

(a) reducing Operation Maintenance and Administration (OM&A) expenses for 2011 and 2012;

(b) reducing rate base expenditures for 2011 and 2012; and/or

(c) reducing Equity Return and Related taxes in 2011 and 2012 to the extent that system safety and integrity is not compromised;

(d) limiting the recovery of deferral account balances to amounts that are compatible with the principles and circumstances that gave rise to the creation of those accounts.

20. We submit that the Board in exercising its rate-making responsibilities in a manner that accords a high priority to consumer protection against price increases is empowered to impose any measure that the utility itself might take without compromising safety or reliability.

21. For the reasons that follow, OPG's application should not be approved as filed. The revenue requirement amounts and deferral account balances that the Board permits OPG to recover should be materially lower than the amounts OPG asks the Board to approve.

II. CONTEXT AND GUIDING PRINCIPLES

22. We submit that matters relevant to the determination of the questions contained in the Issues List include the items described in the paragraphs that follow:

A. <u>Significantly Increasing Electricity Prices</u>

23. As noted earlier, before the government's announcement of the OCEB, the evidence in this proceeding indicated that the non-residential electricity consumers could expect to see their total unit costs rise by between 47% and 64% over the increase already experienced in 2010, ranging between a 15% to 20% increase in total bills. For residential customers, electricity prices were estimated to increase between 38% and 47% over the five-year planning horizon used by OPG, a level of increase that equated to an average annual compound increase of between 6.7% and 8.0% over the increases already experienced in 2010.

24. While the government has recently announced OCEB alleviates electricity pressures facing residential and small consumers, it does nothing to alleviate the electricity price increases facing Ontario manufacturers and others too large to qualify for the OCEB and too small to qualify for the benefits the government has provided to help large industrial consumers cope with significantly increasing electricity prices. The government's failure to provide electricity price increase relief to all electricity consumers leaves the bulk of Ontario manufacturers facing electricity price increases of between 47% and 64% over the next five years.

25. We submit that the overall electricity price increases consumers are facing and will likely face over the course of OPG's five-year planning cycle are a critical consideration when determining the overall reasonableness of the revenue requirement

amounts and deferral account balances OPG asks the Board to approve for 2011 and 2012. We submit that when exercising its rate-making jurisdiction under the *OEB Act*, in the midst of a period of very significant electricity price increases, the Board should accord a high priority to its statutory objective of protecting consumers with respect to electricity price increases.

26. The need to consider overall bill impacts was emphasized by the Board in its April 9, 2010 Decision with Reasons in EB-2009-0096, being Hydro One's application for approval of 2010 and 2011 distribution rates. In the Decision, the Board expressly acknowledged that:

> **"In giving effect to the Board's objective to protect the interests of consumers the Board cannot ignore the overall impacts on customers."**

27. The Decision also states that:

> **"[...] the Board must take into account the overall increase and prospect of further increases in the commodity portion of the bill. While these charges are outside of the control of the applicant, they are no less real for customers."**[14]

28. Mr. Sharp's evidence, containing estimates of the 2010 electricity price increases consumers are experiencing, and the level of electricity price increases consumers will likely experience over the balance of OPG's planning cycle, is evidence pertaining to the "overall increase and prospect of further increases in the commodity portion of the bill." His evidence is precisely the type of evidence that the Decision states cannot be ignored.

29. The bill impact evidence submitted by OPG does not reflect the total impacts of all of the factors that prompt OPG's five-year business plans from which its spending plans for 2011 and 2012 are derived. Only the evidence by Mr. Sharp addresses the overall impacts on customers. The Board's statutory objective to protect the interest of

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[14] EB-2009-0096 Decision with Reasons dated April 9, 2010, p. 13.

consumers demands that this kind of evidence be considered in this case, and in any other rate increase cases, the Board considers.

30. While CME is very gratified by the Board's October 27, 2010 announcement of its three policy initiatives to review ways of exercising its rate-making jurisdiction to manage the pace or rate of bill increases for consumers, we wish to emphasize that the Board's plan to proceed with these initiatives should not detract from its duty to discharge its statutory obligation in this case, and in every other rate increase case, to consider current and prospective increases in electricity bills when determining the extent to which protecting the interests of consumers with respect to electricity price increases should influence an exercise of its rate-making jurisdiction. The announced initiatives should not relieve the Board from considering the evidence of CME when determining the extent to which the Board should take action, in this case, to protect the interests of consumers.

31. The Board cannot ignore the reality that consumers are experiencing electricity price increases of significance in 2010, and are facing further significant increases over the five-year planning horizon from which OPG's test year spending plans have been derived. The government itself recognized that these circumstances justify consumer protection relief, in that the Minister of Energy required OPG to refrain from filing its initially planned application and to consider reducing the amount of the revenue requirement rate increases then being contemplated in order to respond to consumer concerns.

32. For reasons that follow, it is our position that the 2011 and 2012 adjustments made by OPG were insufficient to bring the amounts that it asked the Board to approve in this application within the limits of reasonableness. Further adjustments are required.

B. Protecting Consumers from Electricity Price Increases Should Be the Priority

33. We submit that the weight the Board should accord to the consumer price protection objective set out in section 1.(1).1 of the *OEB Act* should vary with the

significance of the year-over-year price increases consumers are experiencing and will face over the planning period OPG uses to derive its test year spending plans. In this case, where the very significant 2010 price increases are likely to be followed by further significant year-over-year price increases in years 2011 to 2015, the consumer price protection objective should be accorded a high priority.

C. Economic Feasibility and Rate Making

34. Economic feasibility considerations are a cornerstone of utility rate regulation. They should remain a matter of the highest priority.

35. Utility owners who fail to substantiate that utility spending plans are based on forecast circumstances that are likely to be economically feasible run the risk of having material portions of their spending plans rejected by an economic regulator.

D. Utility Accountability for Utility-Related Actions of Its Owner

36. We submit that the government, as the owner of OPG, stands on no higher footing than the non-government owner of any other Board-regulated utility. As a result, like any other Board-regulated utility, OPG is accountable for the utility-related actions of its owner.

37. OPG seeks relief from the Board that includes benefits for its owner. The merits of the relief requested must be evaluated regardless of the identity of OPG's owner.

E. Rate Making as a Surrogate for a Competitive Market Outcome

38. It is often stated that one objective of utility rate making is to produce a result that mirrors that would prevail in a competitive market.

39. An entity operating in an entirely unregulated electricity market would likely make efforts to hold the line on electricity price increases at a time where economic circumstances call for a price increase constraint.

40. We submit that in exercising its rate-making jurisdiction under the *OEB Act* in a manner that protects consumers with respect to electricity prices, the Board can consider what competitive market participants would likely do in similar circumstances and can approve revenue requirement amounts that temporarily reflect a lower return on investment in order to maintain some reasonable electricity price increase stability in the marketplace. Limiting a revenue requirement envelope in this way is compatible with the principle that utility rate making should produce a result that mirrors a competitive market outcome.

F. System Safety and Reliability and Consumer Electricity Price Protection

41. We accept that when considering the amounts of the revenue requirement envelopes for 2011 and 2012, and resulting rates to be approved in this case, the Board should be constrained by considerations of system reliability and safety. We further accept the proposition that system reliability and safety should not be compromised to protect consumers form electricity price increases.

42. However, in applying that concept, it needs to be recognized that a temporary reduction in the recovery by OPG of a full equity return poses no threat to system safety or reliability.[15]

43. The government, as the owner of OPG, does not incur any costs to attract equity capital. It does not require funds to support the issuance of shares and the raising of equity in the capital markets. This is a fact that cannot reasonably be disputed.

44. We submit that the evidence in this case establishes, without doubt, that OPG incurs no utility-related equity capital costs.[16] Stated another way, the inability of OPG to recover a full equity for price increase restraint, poses no threat to system safety or integrity.

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[15] Transcript, Volume 11, pp. 116-117.

[16] Transcript, Volume 11, pp. 114-115.

45. Moreover, back in 2008, when it established the initial payment amounts for OPG, OPG's owner acknowledged that it does not need a full equity return to cover its actual costs of capital. At that time, the government used a 5% Return on Equity ("ROE") to establish the revenue requirement to be recovered in OPG's regulated hydroelectric and nuclear payment amounts. The rate of 5% was the approximate cost of debt the province incurred to finance Ontario Hydro. In announcing the appropriateness of recovering less than a full equity return, the government, recognizing that a full equity return would be in the order of 10%, stated that an ROE of 5% "balances the needs of customers and ensures a fair return for taxpayers", and that an ROE of 5% would "generate revenue to service the OPG debt held by the Ontario Electricity Financial Corporation while putting significant discipline on OPG to contain costs and approval for all operating efficiencies."[17]

46. The evidence is clear that OPG's owner could provide some added consumer protection against electricity price increases without compromising system safety or reliability by waiving the recovery of some equity investment return, just as it did when it initially set OPG's regulated payment amounts. As already noted, we submit that the Board is empowered to impose any measure that the utility itself might take when faced with an environment of steep electricity price increases. In addition to disallowing any budgeted rate base and operating expenses amounts that the Board finds to be unreasonable, the scope of revenue requirement reductions that the Board could make, when setting OPG's revenue requirements for its hydroelectric and nuclear businesses for the two-year test period and the level of deferral account balances recovered from ratepayers includes a reduction in an amount equal to the dividends of consequential taxes that OPG currently plans to pay to its owner during the test period. These funds are not needed to cover any utility related costs.

[17] Undertaking JT1.11.

47. The scope of the Board's consumer electricity price protection powers is broad. CME accepts that system reliability and safety cannot be compromised to protect consumers from electricity price increases. However, in applying that concept, it needs to be recognized that a temporary reduction in the recovery by OPG of a full equity return poses no threat to system safety or reliability.[18]

48. OPG's witnesses acknowledge that OPG does not raise any equity in the capital markets.[19] The owner of OPG does not incur any costs to attract equity capital. It does not require funds to support the issuance of shares and the raising of equity in the capital markets. It cannot reasonably be disputed that OPG incurs no utility related equity capital costs. Stated another way, the inability of OPG to recover a full equity return proposes no threat to system safety or reliability.

49. In short, the scope of the Board's ability to protect consumers with respect to steep increases in electricity prices is far broader than OPG suggests in its argument.

G. The Board's Rate-Making Independence

50. The Board is a quasi judicial regulatory tribunal that determines independently whether the revenue requirement and rates proposed by a particular utility are just and reasonable. The Board has statutory responsibilities that it exercises independently and objectively. These responsibilities include the application, in appropriate circumstances, to protect the interests of consumers with respect to electricity price increases.

51. The Board approves revenue requirements, deferral account balances and consequential payment amounts that reflect its independent and objective evaluation of the amounts for which approval is sought. If amounts lower than those requested are approved, then the utility owner has the option of adjusting its spending plans to achieve

[18] Transcript, Volume 11, pp. 116-117.

[19] Transcript, Volume 11, pp. 114-115.

a particular investment return or to spend as initially planned and realize a return on investment somewhat lower than requested.

52. It is the Board's objective and independent evaluation of reasonableness that protects the overall public interests and the Board's independence is not and should not be compromised by the fact that a utility seeking approvals for revenue requirements and rates is owned by the Province of Ontario.

H. Material Misstatements of Cost Savings

53. As a matter of principle, the Board should vigilantly scrutinize applications by any utility that repeatedly claims material cost savings which, when scrutinized, are highly questionable. It appears that OPG repeatedly claims cost savings which, when scrutinized, are highly questionable.

54. By way of example, Board Staff provided a detailed analysis of the alleged work-driven cost savings of $260M claimed by OPG with respect to nuclear base OM&A. We agree with Board Staff that OPG has not achieved work-driven savings of $260M, and that the manner in which OPG presented this evidence is misleading. We support Board Staff's submissions to the effect that the Board should be particularly concerned by the historical trend of OPG's Base OM&A decreasing in 2009 and 2010, followed by material increases in the test years.[20]

55. OPG's misstatement of cost savings is not only limited to only the $260M addressed by Board Staff. Another example of the misstatement of costs savings is the alleged $85M OM&A reduction which OPG claims it achieved in 2010. This reduction is described by OPG in a press release dated March 29, 2010 as follows:

> **"We deferred our rate application once but we must go to the OEB this year to make a request for an increase in our regulated rates.**

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[20] Exhibit K4.2, p. 15.

> **We continue to look for internal savings on top of the $85 million we've saved to date.[21]"**

56. OPG did not reduce its OM&A as approved by the Board in EB-2008-06-27, or even its actual spending in 2009. Rather, the $85M is a "reduction" from significant increases proposed in OPG's 2009-2013 business plan. That business plan was not subject to scrutiny by the Board and did not receive approval from OPG's Board of Directors. The budgets for Hydro Generation and Nuclear Operations were not reduced in 2010. On the contrary, these budgets were increased by $44M.[22]

57. In 2010, OPG proposed a $69M increase for Nuclear Operations, but OPG's Board of Directors only approved a $29M increase. OPG describes this as a $40M reduction. Similarly, OPG proposed a $20M increase for Hydro Generation in 2010, but OPG's Board of Directors only approved a $15M increase. Again, OPG describes this increase as a $5M reduction.[23] The characterization of what are effectively cost increases as cost reductions is misleading. By analogy, if the Board disallowed $20M of the $27.7M Hydro Generation revenue requirement deficiency OPG seeks in this application, it would be characterized as $20M in savings rather than a $7.7M cost increase. Respectfully, this is misleading.

58. OPG's propensity to characterize reductions in budgeted increase as cost savings, along with its misleading characterization of $260M, to which Board Staff refers in their submissions as "work-driven cost savings", are circumstances that should be of concern to the Board. This propensity to materially misstate cost savings should prompt the Board to vigilantly scrutinize the cost increases OPG asks the Board to approve in this application.

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[21] Exhibit K9.5, Tab 7.

[22] Transcript, Volume 10, pp. 2-6.

[23] Exhibit A, Tab 2, Schedule 1, Attachment 1, p. 10; and Transcript, Volume 10, pp. 2-6.

I. Summary

59. The submissions that follow pertaining to those matters on the Issues List on which we take a position are informed by the foregoing circumstances and guiding principles.

III. DEFICIENCIES IN OPG'S BUSINESS PLANNING PROCESS

60. OPG`s planning process is deficient because it fails to take into account, in any meaningful way, the total electricity price increases consumers are currently experiencing and will be facing over the five-year planning horizon OPG uses. OPG does not consider any electricity price changes that are outside of its control. We submit that OPG should have undertaken an analysis of the total electricity bill increases consumers are experiencing and will face over the planning period from which the amounts claimed in its application are derived. OPG confirmed in oral testimony that it did not undertake any type of analysis of this nature.[24] The result is that OPG's five-year business plans, which underpin this application, were developed without any regard to the significant electricity price increases consumers are experiencing and facing. OPG conducts its planning in a bubble that excludes any consideration of circumstances beyond its control.

61. OPG`s 2010-2014 Business Planning Instructions[25], which were issued on June 3, 2009, provided guidance on how the various business units had to prepare their individual business plans. Based on a plain reading of the Introduction to the Business Planning Instructions, the Board could erroneously conclude that OPG considers the economic turmoil and hardship consumers are facing in its planning process. The Introduction reads, in part, as follows:

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[24] Transcript, Volume 9, p. 164.

[25] Exhibit A2, Tab 2, Schedule 1, Attachment 1.

> **"This year's Business Planning process is occurring against a backdrop of unique financial circumstances. Ontario has been particularly hard hit by the global financial meltdown and the restructuring of the domestic automobile industry.**
>
> **[...] The challenges associated with planning and executing these initiatives would be daunting at any time; the fact that this year's process is occurring during a period of unprecedented economic turmoil, compounds our task this year. The fact that many Ontario businesses are fighting for survival, and ratepayers are facing economic hardship, means that we can expect unprecedented pressure to aggressively manage our costs, while maintaining safe and prudent operations."[26]**

62. OPG`s witnesses characterized the situation facing customers as described in its planning instructions as context only. The description of the situation facing electricity consumers did not prompt OPG to conduct any analysis of the total electricity bill increases and other circumstances prompting the current situation of "unprecedented economic turmoil."[27] OPG intentionally excluded considering estimates of total electricity bill increases facing consumers in its planning process.

63. While OPG is aware that customers are facing significant year-over-year electricity cost increases, it does not undertake an analysis that assesses the level of those overall increases. According to OPG, the overall economic hardship facing consumers merely sets the context for OPG's review of its costs and how they can best manage those costs.[28]

64. According to OPG's witness, Mr. Barrett, the Board should not look at the total bill impacts over the planning horizon[29] because the Board's determination of just and reasonable rates is to take place without any consideration of the overall electricity pricing environment and other economic circumstances that consumers are experiencing and facing. Instead, according to OPG, all the Board can consider when

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[26] Exhibit A2, Tab 2, Schedule 1, Attachment 1, p. 3.

[27] Exhibit A2, Tab 2, Schedule 1, Attachment 1, p.3.

[28] Transcript, Volume 10, pp. 32-33.

[29] Transcript Volume 15, p. 13.

determining just and reasonable rates are the budgets, cost estimates and work programs OPG proposes are reasonable in the context of OPG's plans.[30] The position that the Board is not permitted to consider all of the economic circumstances affecting consumers when determining the reasonableness of the amounts OPG asks the Board to approve is untenable.

65. If the Board accepts OPG's business planning approach, and ignores the electricity price increases consumers are experiencing and facing, then the Board would be ignoring one of its statutory objectives established by Section 1(1)1. of the *OEB Act*, which requires that:

> **"1.(1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:**
>
> **1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service."**[31]

66. OPG's suggestion that the Board should ignore the steeply increasing electricity pricing circumstances consumers are experiencing and facing is incompatible with the provisions of the *OEB Act*. A planning process that ignores the requirements of the *OEB Act* is deficient.

67. As a result of OPG`s myopic approach that ignores total bill impact analysis and other economic circumstances affecting consumers:

(a) Its individual business plans did not consider estimated total electricity price increases consumers would be facing over the planning period;

(b) The Business Planning Group, who consolidated the business plans into a corporate level overview, did not consider estimates of the total bill

[30] Transcript, Volume 15, p. 9.

[31] *Ontario Energy Board Act, 1998*, S.O. 1998, chapter 15, Schedule B, as amended.

increases and other economic circumstances affecting consumers over the planning period;

(c) Presentations made to the CEO and the CFO did not address estimates of total bill increases consumers would be facing over the planning period;

(d) The consolidated Financial Overview presented to OPG`s Board of Directors, also presented to the Ministry, only included a preliminary view on potential rate increases arising from the consolidated business plan, without any assessment of the year-over-year electricity price increases customers have experienced, and will continue to experience over the test period;[32]

(e) Both the Hydro Generation Business Plan and the Nuclear Operations Business Plan presented to the OPG Board of Directors on November 19, 2009 fail to address estimates of total bill increases consumers are experiencing and will be facing;[33] and

(f) The Regulatory Group did not consider total bill increases over the planning period. On the contrary, it specifically advocated that such total bill increases should be ignored.[34]

68. OPG's inappropriately myopic approach to the consideration of total bill impacts over the planning period effectively prompted it to disregard instructions from its owner to carefully re-assess its application to seek further cost savings to respond to the economic circumstances facing consumers. The Minister of Energy and Infrastructure's May 5, 2010 letter to OPG's President and CEO, Tom Mitchell, reads as follows:

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[32] Undertaking J10.1 (Non-Confidential).

[33] Transcript, Volume 2, p. 31.

[34] Transcript Volume 15, p. 13.

> **"I am writing in regard to Ontario Power Generation's (OPG) planned rate application to the Ontario Energy Board.**
>
> **As you are aware, the Province of Ontario has keenly felt the impact of the recent recession, and this has been reflected in the government's 2010 budget. We are aggressively pursuing internal cost savings to meet our fiscal targets. At the same time we are committed to ensuring government agencies and Crown corporations across the public sector are equally focused on delivering cost savings that are under their control.**
>
> **Bearing that in mind, <u>I would request OPG carefully reassess the contents of its rate application</u> prior to filing with the Ontario Energy Board. I would like OPG to <u>demonstrate concerted efforts to identify cost saving opportunities</u> and focus your forthcoming rate application on those items that are essential to the safe and reliable operation of your existing assets and projects already under development."[35]**

69. We submit that, on the basis of his May 5, 2010 letter, the Minister could reasonably expect OPG to reassess its application to identify further costs savings. This did not occur.

70. A plain reading of that correspondence supports a conclusion that OPG should have, at the very least, attempted to identify further cost reductions. The Planning Group did not even try to achieve further cost reductions.

71. The next day, May 6, 2010, an article in the *Globe & Mail* quoted the Energy Minister, Brad Duguid as follows:

> **"We're looking very closely at all increases in the system to ensure that we're standing up for consumers, to ensure that they're getting value for their money. <u>We are scrutinizing any impacts on rates very closely.</u>"[36]**

72. That article also quoted OPG's Vice-President of Regulatory Affairs, Andrew Barrett, as writing in an email to large customers as follows:

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[35] Exhibit L, Tab 4, Schedule 1, Attachment 1.

[36] Exhibit K9.5, Tab 9.

> **"During this time, OPG will review our application to identify ways to further lessen the impact of our request on ratepayers."[37]**

73. Readers of this article would conclude that OPG was conducting a careful re-assessment of its application to review and reduce its spending plans.

74. However, the evidence in this case reveals that neither the Hydro Generation Planning Group nor the Nuclear Business Planning Group were asked to re-assess the contents of their respective business plans or to otherwise identify ways to further lessen the impact of the costs on ratepayers. As such, neither of these plans were revised after the May 5, 2010 letter.[38]

75. With respect to the Business Planning Group, after receipt of Minister Duguid's letter, that group unilaterally determined that OPG was already working with challenging guidelines and were essentially already in compliance with the direction. On this basis, the Business Planning Group determined, without input from the business units, that the plan already addressed the Minister's concerns. To this end, Mr. Halperin confirmed that he felt it was not necessary to ask the business units to take one more look at their plans.[39]

76. Even more startling is OPG`s confirmation that after receiving the Minister's May 5, 2010 letter, the directions given to the Regulatory Group by OPG's President and CEO, Mr. Mitchell, were that they would only look at recovery of the variance and deferral accounts over a different term. This exercise had already been conducted prior to May 5, 2010; OPG had already decided to extend the term of the variance account.

77. OPG's management effectively disregarded Minister Duguid's letter. It did not re-assess its application with a view to finding ways to reduce its impacts on customers. It did not, for example, consider whether the shareholder should be invited to waive some

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[37] Exhibit K9.5, Tab 9.

[38] Transcript, Volume 2, pp. 35-36 and 173-175.

[39] Transcript, Volume 10, p. 18.

of its equity return and related taxes in order to reduce electricity price increase pressures on consumers. This was expressly ruled out by Mr. Mitchell.[40]

78. OPG's complete disregard for the requests by the Minister to reduce the impact of its application on consumers should be of concern to the Board.

79. We submit that the Board requires evidence of the year-over-year price increases consumers are experiencing, and are likely to face over the balance of the planning period, in order to determine the degree of consumer protection that is appropriate in a particular test period.

80. The need to consider overall bill impacts was emphasized by the Board in its April 9, 2010 Decision with Reasons in EB-2009-0096, being Hydro One's application for approval of 2010 and 2011 distribution rates:

> **"[...] the Board must take into account the overall increase and prospect of further increases in the commodity portion of the bill. While these charges are outside of the control of the applicant, they are no less real for customers. In giving effect to the Board's objective to protect the interests of consumers the Board cannot ignore the overall impacts on customers."**[41]

81. Mr. Sharp's evidence, containing estimates of the 2010 electricity price increases consumers are experiencing, and the level of electricity price increases consumers will likely experience over the balance of OPG's planning cycle, is evidence pertaining to the "overall increase and prospect of further increases in the commodity portion of the bill". His evidence is precisely the type of evidence that the Board requires to meet its statutory objectives.

82. The bill impact evidence included in OPG's application does not reflect the total bill impacts which Ontario customers now face. Only the evidence prepared by

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[40] Transcript, Volume 15, pp. 14-16 and 22.

[41] EB-2009-0096, Decision with Reasons, April 9, 2010, p. 13.

Mr. Sharp addresses the overall impacts on customers. The Board's statutory objective to protect the interests of consumers demands that this kind of evidence be considered in this case, and in any other rate increase case, the Board considers.

83. While CME is very gratified by the Board's October 27, 2010 announcement of its three policy initiatives to review ways of exercising its rate-making jurisdiction to manage the pace or rate of bill increases for consumers, we wish to emphasize that the Board's plan to proceed with these initiatives should not detract from its duty to discharge its statutory obligation in this case, and in every other rate increase case, to consider current and prospective increases in electricity bills when determining the extent to which protecting the interests of consumers with respect to electricity price increases should influence an exercise of its rate-making jurisdiction. The announced initiatives should not relieve the Board from considering the evidence of CME when determining the extent to which the Board should take action, in this case, to protect the interests of consumers.

84. In summary, for all of these reasons, we submit that OPG's planning process is deficient because it fails to either analysis or consider total electricity price increases and other economic circumstances consumers are experiencing and facing over the five-year planning horizon OPG uses to derive the budgets and estimates that form the basis of its application to the Board for relief.

IV. REASONABLENESS OF THE OVERALL INCREASES OPG ASKS THE BOARD TO APPROVE

85. Subsumed in the determination of Issue 1.3 of the Final Issues Lists are matters pertaining to OPG's failure to consider the electricity price increases consumers are currently experiencing and facing over the course of OPG's five-year planning cycle, as well as matters pertaining to the extent to which the Board can grant electricity price increase protection for consumers when exercising its statutory mandate to fix and approve just and reasonable rates.

86. For reasons we have already outlined, we urge the Board to find that OPG completely disregarded the current and prospective electricity price increases facing consumers; the magnitude of price increases will be very significant, particularly for those consumers such as manufacturers who do not qualify for the OCEB, and that the Board is fully empowered to grant relief to respond to OPG's application in a way that will provide such consumers with some relief by materially reducing the amounts OPG seeks permission to recover in its regulated payment amounts. The overall revenue requirements and deferral account balances OPG asks the Board to approve are unreasonably excessive, and should be reduced.

V. CAPITAL STRUCTURE AND COST OF CAPITAL

87. In this section of our argument, we address first whether the proposal by some for the adoption of technology specific capital structures is appropriate and second, other matters pertaining to costs of capital raised by OPG and Board Staff in their arguments.

A. Technology Specific Capital Structures

88. We agree with OPG that any benefits that might arguably flow from adopting technology specific capital structures for OPG's hydroelectric and nuclear generation businesses are, at best, marginal. We submit that, absent a convincing demonstration of material benefits, the proponents for technology specific capital structures fail to make their case. In these circumstances, we urge the Board to reject the proposal, particularly when it will unnecessarily add more complexity to OPG's already horrendously complex payment amount applications.

B. Other Cost of Capital Issues

89. Relying upon the oft cited Supreme Court of Canada decision in *Northwestern Utilities Ltd. v. Edmonton (City)*, [1929] S.C.R. 186, and the Federal Court of Appeal decision in *TransCanada Pipelines Ltd. v. Natural Energy Board et al.* (2004), 319 N.R. 172 (FCA), OPG argues that the Board is not empowered to award, even temporarily,

OPG a return on equity that is less than the rate that is derived by applying the Board's cost of capital guidelines. We disagree with OPG.

90. The provisions of the *OEB Act* specifically require the Board, when exercising its rate-making and other responsibilities, to be guided by objectives that include the objective of protecting consumers with respect to electricity prices. There is no objective in the legislation that requires the Board to award an equity return at any particular "absolute" level.

91. If the equity return that the Board is required to allow is an "absolute" finite number, as OPG argues, then the Board can never adjust its guidelines equity return allowance to reflect abnormal or unique circumstances facing a particular utility or to reflect temporarily abnormal economic circumstances. If the ROE is an "absolute" as OPG argues, then the Board is powerless to award a higher ROE on a project-specific basis. Yet that is exactly what the Board is suggesting in its Report entitled "The Regulatory Treatment of Infrastructure Investment in Connection with the Rate-Regulated Activities of Distributors and Transmitters in Ontario",[42] that it is empowered to provide. Moreover, if the equity return allowance is an "absolute", then it would follow that any actual earnings in excess of that "absolute" should be returned to ratepayers and any shortfall should be recoverable from ratepayers. This is not how the Board regulates the equity returns that it permits utilities to earn.

92. The proposition that the return allowance is an "absolute" and not subject to an adjustment, even temporarily on a case-specific basis to reflect abnormal circumstances, is incompatible with the Report on which OPG relies. That report specifically recognizes that the appropriateness of applying its guidelines, in a particular case, is to be determined on a case-by-case basis.

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[42] EB-2009-0152.

93. Accordingly, we submit that the flexibility that the Board has in determining equity return in any particular case is broad. For example, in a case such as this, where electricity consumers are experiencing and facing steeply increasing electricity prices in the near term, the Board is empowered to award a level of equity return that accords a high priority to protecting consumers from electricity price increases. Stated another way, what a particular utility is permitted to earn by way of return on equity at a time when price increase constraint is required, can differ from what a Board regulated utility can reasonably expect to earn in circumstances where a utility electricity price constraint is not required.

94. The Board is not precluded from considering such circumstances when determining the appropriate equity return to allow to a particular utility at a time when pricing constraint is required. In fact, the electricity price protection objective expressed in the *OEB Act* specifically requires the Board to consider such circumstances.

95. In this case, we are not talking about "rate shock". We are dealing with an external condition affecting electricity consumers that calls for electricity pricing constraint. We submit that the Board has under its enabling statute the express authority and flexibility to allow OPG a return on equity in an amount that is less than the amount that results from mechanically applying the Board's cost of capital guidelines. The level of absolute entitlement to an equity return to which OPG refers in its argument at page 64 will depend upon the particular circumstances prevailing at the time the award is determined and in particular, whether any circumstances exist to engage the Board's electricity pricing protection power in a determination of that level of allowed return.

96. The circumstances considered by the Federal Court of Appeal in the TCPL case upon which the OPG relies, are quite different from the circumstances in this particular case calling for an exercise by the Board of its power to protect consumers from steeply rising electricity prices.

97. With respect to the Federal Court of Appeal decision on which OPG relies, the first point to note is that the statement in the decision that, when determining return on equity, "[...] the impact of any resulting increases on customers and consumers [...]", is an irrelevant consideration, is obiter, in that particular case because TCPL failed to demonstrate that the Board took the impact of "increases on customers or consumers into account in making its determination of return on equity".

98. Neither of the decisions upon which OPG relies preclude the Board from considering the steeply increasing electricity price environment that consumers are experiencing and facing. OPG's reliance on these decisions in an attempt to preclude the Board from considering these and any other economic circumstances beyond OPG's control is misplaced. Moreover, in this case, the factor that should influence the equity return level the Board determines for OPG is the steeply increasing overall electricity price increases being experienced and facing consumers and not merely OPG's contribution to that situation.

99. Unregulated industries, when faced with external circumstances calling for pricing restraint would, we submit, forego a full equity return on investment until such time as the circumstances calling for price constraint abated. The same should apply to OPG and we submit the Board is fully empowered to impose a result that would be comparable to the expected outcome in a competitive market.

100. Our questioning of OPG's witnesses with respect to the cost of equity capital, was for the primary purpose of establishing that the scope of relief the Board can grant to protect consumers from electricity price increase encompass the determination of a return on equity and related taxes that falls below the percentage amount that results from applying the Board's cost of capital guidelines. While we reserve our rights in future cases, we are not suggesting any permanent override of OPG's right to seek the equity return that stems from the Board's December 2009 Cost of Capital Report. We accept that the consumer protection relief that we say the Board can and should grant

should be relaxed when the situation of significant year over year electricity price increases has abated.

101. Also of relevance to the extent to which the Board has flexibility to award OPG an equity return less than the percentage amount that results from applying the Board's cost of capital guidelines are the actual sources of funds that are used to finance OPG's capital structure.

102. The Board has always looked to sources of funds and the actual costs of those funds when considering cost of capital issues. For example, the Board treats equity capital derived from deferred taxes as "an interest free loan from the government" with the result that it attracts a zero cost of capital when determining just and reasonable rates.[43] The regulated rates of a hypothetical privately owned utility, funded entirely by a combination of industry loans or grants from the government and deferred taxes would include no allowance for the cost of capital, since such a hypothetical utility incurs no costs of capital.

103. The sources of funds used to finance OPG's capital structure are effectively either interest free government loans or grants, sourced from taxes, or money the government borrows in the debt markets. In these circumstances, the only "costs" of capital that OPG's owner actually incurs with respect to OPG's capital structure are, at most, the costs that the government incurs to borrow funds in the debt markets. This reality was acknowledged by OPG's owner back in 2008 when the government established the initial payment amounts for OPG.[44] At that time, the government used a

[43] See for example Reasons for Decision in E.B.R.O. 380 dated September 14, 1981, at pages 61 and 62 where the Board found that capital sourced from taxes should be deducted from Rate Base so that no return is awarded thereon. That practice was followed by the Board consistently after that Decision. See also National Energy Board Decision in RH-1-78 duly July 1978 to the same effect, where capital sourced from taxes is deducted from Rate Base and thereby accorded a zero return. In prior OEB cases, such as E.B.R.O. 343-1 Reasons for Decision Phase I dated June 30, 1976, the return allowed on funds sourced from taxes was the difference between the overall rate of return and an imputed interest rate on a deferred tax balance. A Decision in E.B.R.O. 367-1 Phase I dated July 7, 1978, at page 48 indicates that capital sourced from taxes should be regarded as an interest-free loan from income tax authorities.

[44] Undertaking JT1.11.

5% return on equity to establish the revenue requirement to recover the OPG's regulated hydroelectric and nuclear payment amounts. The rate of 5% was the approximate cost of debt the province incurred to finance Ontario Hydro. In announcing the appropriateness of recovering less than full equity return, the government, recognizing that while the ROE for North American utilities is 10%, a 5% ROE will generate revenue to service the OPG debt held by the Ontario Electricity Financial Corporation while putting significant discipline on OPG to contain costs and improve overall operating efficiencies.

104. The evidence in this case establishes that OPG does not raise equity in the capital markets.[45] Accordingly, the Board can provide some added consumer protection in this case without compromising system safety or integrity by fixing a ROE for OPG that is less than the percentage that results from applying the Board's guidelines. As long as the ROE the Board allows is higher than the government's cost of debt, then the provisions of the Federal Court decision in TCPL case are satisfied. OPG recovers its actual costs of capital and more. Matters pertaining to the sources of OPG's capital and not matters pertaining to owner lead to this conclusion.[46]

105. For these reasons, we submit that the Board has the power to fix an equity return for OPG at a percentage that is lower than that produced by applying the Board's Cost of Capital Guidelines. We submit that the Board can and should consider an exercise of that power in this particular case because, as already noted, the government's use of the returns and related taxes it recovers from OPG and Hydro One to provide the OCEB to some but not all electricity consumers distorts the price increase environment facing manufacturers and others that do not qualify for the OCEB. These manufacturers who are a core component of Ontario's economy, desperately need relief from sharply increasing electricity prices as much as the other consumers who qualify for the OCEB in order to cope with the increasing pressures they face. The Board has power to

[45] Transcript, Volume 11, pp. 114-115.

[46] OPG Argument-in-Chief, p. 65.

benefit those who remain most disadvantaged by the significantly increasing electricity price environment. It can and should use that power in this case as long as it does not compromise system safety and reliability.

106. In addition to disallowing a portion of budgeted rate base and operating costs that the Board finds to be unreasonable, the scope of revenue requirement reductions the Board can make when setting OPG's payment amounts for the 2011 and 2012 test period includes reducing the revenue requirement envelopes for each of those years by the amount of any dividends and consequential taxes that OPG plans to pay to its owner. These funds are not needed to cover any utility related costs and reducing revenue requirement amounts to preclude their collection in the environment calling for an exercise of price increase. An exercise of protection power in favour of consumers will not compromise system safety and reliability.

C. Costs of Debt

107. In its argument, Board Staff takes issue with some of OPG`s proposals pertaining to the costs of short and long-term debt. In our view, the Board should be consistent in the way it determines the cost of short term and long-term debt for the government owed utilities it regulates. Subject to that general observations, we have no further submissions to make with respect to Board Staff's proposals.

D. Annual Adjustment to OPG's Costs of Capital

108. Board Staff also argues for a mid-test year adjustment to the cost of capital components of OPG's payment amounts. We have had the benefit of reviewing SEC's Written Submissions on this matter. To this end, we support and adopt SEC's conclusions.

VI. RATE BASE AND CAPITAL EXPENDITURES

A. Hydroelectric Rate Base – The St. Lawrence Visitor Centre

109. OPG requests approval for $12.6M in rate base for the construction of the St. Lawrence Power Development Visitor Centre ("Visitor Centre"). If approved, the annual revenue requirement impacts of the Visitor Centre is $3.5M per year.[47]

110. The last time OPG operated a visitor centre was 1992. In its written argument, OPG claims that the original visitor centre cannot be reopened due to post-9/11 security concerns, which obviously did not arise until 2001.[48] No explanation was given for the visitor centre remaining closed between 1992 and 9/11. In any event, the fact remains that for almost two decades, OPG has operated without a visitor centre.

111. As OPG recognizes in the 2010-2014 Business Planning Instructions, Ontario has been particularly hard hit by the global financial meltdown and the restructuring of the domestic automobile industry, and that Ontario businesses are fighting for survival and ratepayers are facing economic hardship.[49] Under such circumstances, it is entirely inappropriate for OPG to include an additional $12M in rate base for 2010, which has an annual revenue requirement impact of approximately $3.5M, for a total of $7M over the test period.[50] Now is not the time for OPG to undertake additions that are not essential to its core business. On this basis alone the Board should disallow all costs associated with the Visitor Centre.

112. Moreover, we agree with Board Staff's Written Submission that OPG has not demonstrated, either in written evidence or testimony, that the Visitor Centre is required for the continued operations of the Saunders Generating Plant or is a benefit to

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[47] Transcript, Volume 1, p. 44.

[48] Exhibit D1, Tab 1, Schedule, p. 11.

[49] Exhibit A, Tab 2, Schedule 1, Attachment 1, p. 3.

[50] Transcript, Volume 1, pp. 43-44.

ratepayers. We submit that the primary rationale for OPG building the Visitor Centre is to maintain relations with the host community.[51] It is inappropriate for electricity ratepayers to pay for a Visitor Centre intended largely to persuade representatives from the City of Cornwall from lobbying the Provincial Government.

113. The Visitor Centre is not, as OPG claims, a "sustaining project". The Visitor Centre does not directly affect OPG's ability to continue to operate the Saunders facility. The Visitor Centre was constructed to enhance OPG's relationship with the Cornwall community and to placate Cornwall's concerns about the fact that OPG does not pay municipal taxes. We submit that it is inappropriate for ratepayers to be asked to pay the costs of such ventures. Such costs should be classified as non-utility and not otherwise as OPG contends.

114. The Board should reduce the test period of hydroelectric revenue requirement by $7M to remove therefrom the costs associated with the Visitor Centre.

B. Nuclear Rate Base

115. Board Staff has provided comprehensive written submissions with respect to OPG's proposed nuclear rate base. We support and adopt Board Staff's conclusion that OPG's nuclear rate base should be reduced by $128M for 2011 and by $161M for 2012.

116. We are particularly concerned about OPG's over-forecasting of rate base by 4.3% in 2008 and 4.5% in 2009. The consequence of these inflated forecasts is that OPG over-earned $12.7M over the previous Board-approved test period of 2008 and 2009.[52] To this end, OPG has not proposed any changes to the manner in which it forecasts rate base. We find it curious that in this application, OPG has only introduced new forecasting elements for items that have historically produced negative cost-impacts on its earnings, but not for items that have resulted in over-earnings. For

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[51] Transcript, Volume 1, p. 44.

[52] Exhibit KT1.6.

instance, as addressed in more detail below, OPG has introduced surplus baseload generation into its hydro production forecast and "major unforeseen events" into its nuclear production forecast. This trend reinforces the need for the Board to carefully scrutinize the cost increases OPG's seeks in this application.

VII. DARLINGTON REFURBISHMENT

A. The Darlington Refurbishment Plan

117. CME supports the government's Darlington Refurbishment plan. In a report it released in July 2010, CME estimated that substantial economic benefits would be realized by refurbishing and operating Ontario's nuclear reactors.[53] The analysis CME published notes that:

> **"Nuclear power is a critical source of base load electricity supply. In 2009, Ontario's nuclear reactors provided over 55% of the province's electricity needs. This level of electricity generation is an integral part of the government's long-term plan. As existing nuclear reactor units age, they need to be refurbished or refilled. Refurbishing a CANDU reactor offers the opportunity to extend the unit's operating life by 25 to 30 years. Nuclear power, on a dollar per megawatt basis, remains one of the cheapest power sources in Ontario's electricity portfolio."**

118. The Executive Summary in the report concluded as follows:

> **"The employment and economic benefits to Ontario from refurbishing and operating the Bruce and Darlington reactors are substantial: almost 25,000 jobs and annual economic activity of over $5 billion. These benefits occur over the refurbishment period 2014 through 2024. Once the reactors are refurbished, the benefits will continue until approximately 2050 because of the continued operation of the reactors. These long-term operational benefits comprise 15,600 jobs and an annual economic benefit of $2.5 billion. All benefits are expressed in constant Canadian dollars.**

[53] http://on.cme-mec.ca/_uploads/pdf/CME-EconomicBenefitsReport.pdf

119. The evidence in this case reveals that OPG plans to proceed with the project with or without the particular Darlington refurbishment related approvals it seeks in this case. It is clear that OPG's plans in this respect are based on its expectation that funding for the project will consist of a combination of funds recovered in regulated payment amounts and funds to be "recovered from a new funding mechanism determined by the province for new nuclear".[54]

120. CME's published analysis supports the view that OPG has expressed in its evidence to the effect that preliminary estimates establish that the Darlington refurbishment project is economically feasible.

121. We recognize that a number of parties to these proceedings, including Board Staff, question OPG's conclusions as to the extent to which its preliminary estimate of project benefits exceed currently estimated project costs. We also acknowledge that there are many uncertainties associated with economic feasibility estimates prepared at the early stage of a long-term project of this nature. Clearly, the probable economic feasibility outcomes will become more predictable as time passes. As noted in the Guiding Principles section of this argument, we acknowledge and adhere to the principle that objective demonstrations of economic feasibility are fundamental to utility rate regulation. Board-regulated utilities should be exposed to revenue requirement disallowances when they fail to demonstrate that costs they seek to recover in regulated rates relate to projects that are likely to be economically feasible.

122. As we see it, the question for the Board, in this case, pertaining to the 2011 and 2012 test period, which covers the very early stages of the Darlington refurbishment project, is whether the economic feasibility analysis OPG has presented is sufficient to justify a preliminary conclusion with respect to economic feasibility that warrants approvals for the recovery in regulated payments amounts of costs associated with advancing the project through to its next phase.

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[54] OPG Argument-in-Chief, p. 40.

123. Except for OPG's CWIP proposal, which should not be approved for the reasons we outline in the section of this argument that follows, we urge the Board to find that the OPG evidence is sufficient to support a tentative conclusion that the Darlington Refurbishment Project is likely to be economically feasible. We submit that a preliminary conclusion that the project has positive feasibility is appropriate, at this time, notwithstanding the weaknesses in OPG's economic feasibility evidence to which Board Staff has referred and other interveners will likely refer in their arguments.

124. However, the Board should make it clear to OPG that its conclusion in this case pertaining to economic feasibility is preliminary and tentative, and not the Board's final determination with respect to the issue. We suggest that the Board state in its reasons, in this case, that OPG's failure to objectively establish and confirm that this project continues to have positive economic feasibility could lead to a write down of the value of Darlington assets, in subsequent proceedings, for the regulatory purpose of determining OPG's just and reasonable nuclear payment amounts.

125. We suggest that an observation of this nature should be sufficient to assure that electricity consumers will not be called upon to subsidize a long-term project that fails to continue to demonstrate positive economic feasibility.

126. Based on its own analysis, CME does not expect a negative economic feasibility scenario to emerge in the future. Nevertheless, in accordance with sound rate-making principles, the amount of funding for the project being recovered through OPG's regulated payment amounts should decline in the unlikely event that a negative economic feasibility scenario does emerge. If the funding of the project through regulated payment amounts declines in the future because a negative economic feasibility scenario emerges, then the result will be that any funding that is required to make up that shortfall would need to come from funding obtained from other sources by OPG's owner.

127. For these reasons, and except for its CWIP proposal, we support the particular Darlington refurbishment approvals OPG asks the Board to grant.

B. Construction Work in Progress ("CWIP")

128. We agree with Board Staff's analysis of the Board's January 15, 2010 report entitled "The Regulatory Treatment of Infrastructure Investment in Connection with the Rate Regulated Activities of Distributors and Transmitters in Ontario, EB-2009-0152" (the "Report"). In particular, the Darlington Refurbishment Project does not fall within the scope of that Report because it does not pertain to investment and infrastructure by electricity transmitters and distributors in the context of the *Green Energy and Green Economy Act*, 2009.

129. We submit that the Darlington Refurbishment Project should continue to be treated, for regulatory purposes, just as any other large project. The conventional cost recovery methods under which the Board historically has operated are sufficient to address any risks associated with the Darlington Refurbishment Project. There is no reason, at this time, for OPG to include the Darlington Refurbishment Project ("CWIP") in rate base.

130. In this regard, CME concurs with Board Staff that OPG has presented little reliable and substantive evidence upon which to assess the alleged customer benefit that will flow from CWIP. While including CWIP in rate base may offer some longer-term benefits, such as rate shock and credit risk in certain projects, the evidence in this case does not support such a conclusion.

131. Moreover, for consumers, the CWIP proposal is a "front end load" mechanism. In the significantly increasing electricity price environment that consumers currently find themselves, such a "front end load" proposal is untimely. CME submits that OPG's CWIP proposal should not be approved, at this time, even if, over the long term, there are some cost savings.

132. A rejection of OPG's CWIP proposal, in this case, does not preclude OPG from renewing the proposal at a later date, if and when the significant year-over-year

electricity price increases facing consumers have abated and the electricity pricing environment has stabilized.

133. A disallowance of OPG's CWIP proposal with respect to the Darlington Refurbishment proposal will reduce the test period revenue deficiency by $37.9M.

VIII. NUCLEAR LIABILITIES

134. OPG has applied the methodology for determining its nuclear liabilities that the Board established in its first payment amounts decision. The Board's initial decision indicated that parties would be permitted to invite the Board to consider changing its approach in the event that other regulatory jurisdictions adopted a different approach. The transparent separate line item cost of service approach apparently favoured by National Energy Board ("NEB") is not sufficiently well developed to be considered, in this case, as an alternative. We wish to reserve CME's rights to urge the Board to consider adopting that type of approach once the NEB's approach has been adequately defined.

135. Counsel for Vulnerable Energy Consumers Coalition ("VECC") has provided us with a draft of his submissions with respect to Nuclear Waste Management and Decommissioning Liabilities. We adopt and support those submissions. In particular, we agree that OPG must account for the extent to which ratepayers overpaid for nuclear liabilities in 2010.

136. The evidence indicates that, before gross up for taxes, the amount to be credited to ratepayers is $64.2M.[55] The tax component of that amount is about $26.2M which OPG seeks to recover through the tax loss variance account pertaining to 2010.[56]

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[55] Exhibit L, Tab 15, Schedule 35, Attachment 1.

[56] Undertaking J11.05.

137. For reasons set out in the tax loss variance account section of this argument, OPG should not be allowed to recover any amounts recorded in that account for 2010. If the Board agrees with that submission then the $26.2M of taxes related to the ratepayers overpayment of $64.2M on account of nuclear liabilities in 2010 will be excluded from amounts recovered from ratepayers.

138. If the Board disagrees with the submissions of interveners pertaining to the elimination of the 2010 component of the Tax Loss Variance Account, then at least $26.2M thereof must be disallowed in conjunction with crediting ratepayers for the extent to which they have overpaid for nuclear liabilities in 2010.

139. We agree with counsel for VECC that the 2010 overpayment amount should flow to the benefit of ratepayers through the deferral account that applies to nuclear liabilities. Clearly, the intent of the deferral account is to protect both ratepayers and OPG from overpayments or underpayments pertaining to nuclear liabilities.

140. If, as OPG contends, ratepayers have no deferral account protection for the 2010 overpayment, then OPG's failure to bring to the Board's attention, in a timely manner, the circumstances pertaining to this material overpayment reflects poorly on OPG. If there is no deferral account protection for the overpayment amount, then the Board should deduct it from the revenue requirement envelope it approves for the purposes of determining OPG's nuclear payment amount for the 2011 and 2012 test period.

IX. OPERATING COSTS

A. Nuclear Benchmarking

141. In preparing its submissions on nuclear benchmarking, we have had the benefit of reviewing the submissions of both Board Staff and SEC. As set out below, we agree that OPG's benchmarking methodology could be improved.

142. First, as suggested by SEC, OPG should be directed to undertake a study of the major areas of cost differences between CANDU and PWR/BWR generating facilities.

Such a study should consider not only the disadvantages of CANDU reactors that are outside of the control of OPG, but also the advantages offered by CANDU plants such as lower fuel costs. Evidence of this nature should permit the Board, in a future case, to assess whether the disadvantages of CANDU reactors exceed the advantages, and if so, whether adjustments are required when assessing OPG's performance compared to PWR/BWR reactors.

143. Second, where the EUCC group of data contains obvious outliers, those outliers should be removed. In this regard, OPG's proposed forced loss rate ("FLR") of 1.5% for 2011 and 2012 is artificially inflated because of the inclusion of an FLR outlier of 3.2% from 2006. If that outlier is not considered, OPG's FLR target would be 1.1% instead of 1.5%.[57] The incremental revenue requirement impact for 2011 and 2012 of the FLR target decrease from 1.5% to 1.1% is $14M. [58]

144. OPG's Memorandum of Agreement ("MOA") with the Province of Ontario dated August 17, 2005 requires that OPG seek continuous improvement in its nuclear generation business and internal services, and that OPG benchmark its performance in these areas against CANDU plants worldwide, as well as against the top quartile of private and publicly owned nuclear electricity generators in North America.[59] The operational priority demanded by the MOA is that OPG improve the operation of its existing nuclear fleet. We agree with Board Staff that an FLR target exceeding 1.1% does not represent continuous improvement within the meaning of the MOA and, as such, the Board should remove $14M from the revenue requirement.

145. Finally, we share Board Staff's concerns with respect to the staffing of OPG's Radiation Protection Function ("RPF"). This issue arises out of ScottMadden's

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[57] Transcript Volume 3, p. 45.

[58] Undertaking J3.2.

[59] Exhibit A1, Tab 4, Schedule 1, Attachment 2.

completion of a conducted a top-down staffing analysis of RPF.[60] ScottMadden concluded that RPF was overstaffed by 48 FTEs, and recommended that OPG re-assign 35 FTEs and eliminate 13 FTEs. While OPG has re-assigned 35 FTEs, contrary to the recommendation of ScottMadden, OPG has only eliminated one position. Had OPG eliminated all 13 FTEs, instead of just 1, its annual costs would be reduced by \$2.2M.[61] We agree with Board Staff that ratepayers should not bear the \$4.4M of costs over the test period which flow from OPG's decision to ignore the recommendation of ScottMadden.

B. <u>Nuclear Fuel Costs</u>

146. As a direct result of OPG's nuclear fuel purchasing strategy in 2006 and 2007, OPG's nuclear fuel costs are increasing, materially, during the period 2007 to 2012, even though the market price of nuclear fuel has consistently seen material decreases over the past two years. Board Staff has aptly referred to this outcome as OPG's "price-cost disconnect".

147. OPG generally enters into two types of long-term contracts. One category are "indexed contracts" in which there is a negotiated term for the contract, a starting price reflecting the market price at the commencement of the contract and a negotiated inflation rate. The other category are "market rate contracts" in which OPG obtains guaranteed supply over the long term whereby the price is market-based at the time of purchase by the market.

148. The result of indexed contracts is that OPG must purchase fuel in subsequent years at a previous year's escalated or inflated cost. So, for example, under an indexed contract entered into in 2007, when the price of uranium exceeded \$130 per pound, OPG is contractually required to purchase uranium at the 2007 term price escalated by

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[60] Exhibit F5, Tab 1, Schedule 2, p. 26.

[61] Undertaking J3.1.

an inflation rate even though the actual market price at the time of purchase could be as low as $40 per pound.[62]

149. OPG identified various supply objectives and strategies for the purchase of uranium. First, OPG requires the fuel quality to be assured by sourcing from certain suppliers and ensuring that it meets various pre-determined standards. Whether OPG is purchasing its fuel on indexed long-term contracts, market rate long-term contracts, or the spot market, OPG always ensures that the uranium is of the appropriate quality. OPG confirmed that this is a non-negotiable item.[63] As such, regardless of the form of contract that OPG uses to purchase the uranium, the contract does not affect the quality of the uranium.

150. The second supply objective, identified by OPG, is security of supply. In this regard, OPG confirmed that whether they choose to secure their long-term supply by entering into either a market rate long-term contracts or an indexed long-term contract, the security of supply is unaffected. OPG further confirmed that as long as suppliers were willing to sign long-term market based contracts that meet the quality standard required by OPG, then OPG could, on a going forward basis, confines its purchases to market-based contracts and refrain from procuring fuel under indexed contracts.[64] To this end, OPG witnesses also confirmed that when the last set of long-term contracts were negotiated in the 2006-2007 time period, they did not have any difficulty in finding companies willing to enter into long-term market-based contracts, and that OPG is not aware of any information that would change that situation as of today.[65] Accordingly, obtaining access to suppliers willing to enter into long-term market-based contracts is not a problem for OPG.

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[62] Transcript, Volume 4, p. 139

[63] Transcript, Volume 4, p. 140.

[64] Transcript, Volume 4, p. 141.

[65] Transcript, Volume 4, p. 141.

151. Finally, the third supply objective is to obtain supply at the lowest cost consistent with the first two objectives. In this regard, had OPG entered into market based long-term contracts in 2006 and 2007, instead of indexed contracts, they would have, to date, paid much less for uranium.[66] OPG claims, however, that the resulting average portfolio price of its indexed contracts is more stable than relying on market prices alone, and that this provides a benefit to ratepayers.[67] This justification for a large proportion of indexed contracts in its portfolio seems to be incompatible with OPG's evidence that it does not speculate or hedge on the price of uranium. In any event, the reality is that the gamble that OPG took when it entered into indexed contracts in the 2006-2007 period has not paid off. On the contrary, it has been detrimental to OPG's ratepayers.

152. We are concerned that OPG appears to have entered into the indexed contracts to ensure security of supply without regard to its third supply objective of minimizing costs. OPG's lack of concern with respect to the cost increases is demonstrated by the fact that it has not undertaken a study tracking the cost of indexed contracts versus the market price of uranium.[68] We question how OPG can effectively consider the prudence of their supply-mix without tracking this information.

153. Furthermore, OPG's witnesses initially testified that OPG had never commissioned an external analysis of OPG's procurement strategy.[69] As it turns out, there was a study in 2007. The fact that the witnesses in charge of nuclear fuel purchases were not aware of this previous study illustrates the minimal importance they place on the issue of cost minimization.

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[66] Transcript, Volume 4, p. 142.

[67] Exhibit L, Tab 1, Schedule 64.

[68] Undertaking J4.6.

[69] Transcript, Volume 15, p. 109.

154. OPG claims that it reviews the portfolio mix from time to time, and believes that its strategy is appropriate. OPG has no plans to make any fundamental changes to its procurement strategy. In oral evidence, OPG claimed that the nuclear fuel procurement group works with the risk group to examine different strategies that would provide different coverages. In this regard, these two groups apparently update that analysis on an annual basis to provide status reports to their senior management and to support requests for a continuation of the existing approach to procurement. Since OPG has not undertaken a study tracking the cost of indexed contracts versus the market price of uranium,[70] it is difficult to understand how OPG objectively determines the appropriate mix of market-based and indexed contracts in its procurement portfolio.

155. In addition to these concerns with OPG's nuclear fuel procurement strategy, we are also concerned by the fact that OPG has consistently forecast nuclear fuel costs that turn out to be too high. While the majority of these costs are subject to the nuclear fuel cost variance account, the portion of nuclear fuel inventory included in working capital is not currently covered by that variance account.[71] The result is that when the price for nuclear fuel embedded in the payment amounts the Board approves is too high, then OPG over earns. In the previous test period, this situation produced $27M of over earnings that will not be credited to ratepayers through the operation of the variance account.[72]

156. We have considered Board Staff's proposal to restructure the Nuclear Fuel Cost Variance Account to prevent this situation from occurring in the future. We support Board Staff's approach and urge the Board to adopt it.

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[70] Undertaking J4.6.

[71] Transcript, Volume 15, p. 24.

[72] Exhibit L, Tab 1, Schedule 2.

C. Compensation

157. OPG confirmed in oral evidence that it should be paying market rates for labour. [73] We submit that the Board should assess OPG's compensation costs on this basis.

158. OPG participated in a study of the power services industry conducted by Towers Perrin. That study compares data across Canada where job matches are sufficiently strong. The Board may, by relying on the Towers Perrin study, determine the extent to which OPG's pays above or below market rates.

159. In its application, OPG compares the amount it pays for labour to the 75th percentile of the market data provided by Towers Perrin. We submit that by comparing its rates to the 75th percentile, OPG is already acknowledging that its rates for labour are significantly higher than market rates. In considering the appropriateness of OPG's labour costs, the Board should not base its assessment of the lowest quartile. On the contrary, we submit that the reasonableness of the amounts OPG recovers for labour in regulated rates should be based on the 50th and not the 75th percentile of market data.

160. OPG's labour costs significantly exceed the 50th percentile. Using the information provided by Towers Perrin, based on their 2009 survey, Undertaking J8.6 shows the difference between OPG's average salaries for represented staff compared to the 75th and 50th percentiles. The costs included in Undertaking J8.6 represent only 28% of incumbents in union represented jobs in OPG's regulated business. Put another way, that undertaking only addresses the overpayment of 2,804 out of 10,003 incumbents. OPG claims that it does not have information that would allow it to calculate the difference between existing average salaries and the 75th or 50th percentile for the remainder of the represented incumbents.

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[73] Transcript, Volume 8, p. 149.

161. In order for OPG to get to the 75th percentile for 2,804 staff out of 10,003 incumbents, its compensation costs would be reduced by $16,168,704.82 ($16.2M). In order to get to the 50th percentile for these same staff members, OPG's budget would be reduced by $37,670,924.82 ($37.7M). Again, these cost reductions are only related to 28% of OPG's unionized incumbents.

162. The Towers Perrin report provides a snapshot of 28% of OPG's labour force. OPG elected not to file any additional evidence to address the remaining 7199 incumbents. In such circumstances, we submit that the Board is entitled to assume, for regulatory purposes, that the results of the Towers Perrin report are likely representative of all of the incumbents.

163. As recognized in Board Staff's Written Argument, the $37.7M is based only on 28% of the incumbents in OPG's regulated operations, and that in light of the fact that 28 of 30 OPG positions (or 93%) were above the 50th percentile, the results based on the 30 occupations are likely representative of all union represented jobs in OPG's regulated business. A reduction of $37.7M would only adjust 2,804 staff out of 10,003 to the 50th percentile.[74] In such circumstances, we submit that it is reasonable for the Board to disallow an amount that is considerably more than the $37.7M recommended by Boart Staff. We submit that using the 50th percentile as a guide, the disallowance for all 10,003 incumbents could be as much as $134.48M. At the 75th percentile, for all 10,003 incumbents, could be as much as $57.8M (10,003/2804 = 3.567 x $16.2M = $57.8M), which is some $20M more than the disallowance Board Staff recommends. We urge the Board to find that OPG's compensation costs are unreasonably high by an amount that significantly exceeds $37.7M.

164. Any disallowance in excess of $37.7M increases the total OM&A reductions recommended by Board Staff for 2011 of $64.6M and $63.2M for 2012. On the basis of

[74] Undertaking J8.6.

the 50th percentile, the upper limit for OM&A reductions in 2011 is $161.4M, and for 2012 about $160M.

165. Using the 75th percentile results for all 10,003 unionized incumbents would increase the envelope of OM&A reductions recommended by Board Staff by about $20M in each of the years 2011 and 2012 from about $64.6M to $84.7M in 2011, and from about $63.2M to $83.3M in 2012.

X. PRODUCTION FORECAST

A. Introduction

166. Among the more audacious aspects of OPG's application is the fact that it has asked to be compensated, in advance, for future contingent events which, by it's own admission, it cannot guarantee will ever come to pass. These requests have been incorporated by way of adjustments to the production forecasts provided to the Board both in respect of hydroelectric generation and nuclear generation.

167. In 2009, officials within OPG determined, on their own initiative and with little analysis, that they should introduce two new concepts into OPG's future rate applications: Surplus Baseload Generation ("SBG") and Major Unforeseen Events ("MUE"). The stated purpose of these new concepts is to provide greater accuracy in OPG's production forecasts. However, there is little, if any, evidence to support the contention that these concepts achieve that objective.

168. For the reasons that follow, we submit that OPG's forecast costs associated with SBG and MUE should be disallowed. By rejecting both these features of OPG's application, the combined payment amount burden on ratepayers will be reduced by some $232.5M.

B. Surplus Baseload Generation

169. SBG occurs when electricity production from baseload facilities is greater than demand. In essence, when provincial electricity supplies exceed consumer demand, OPG reduces its production levels by spilling water. The reasons why supply exceeds demand, and the likelihood that this will happen in the future, was an issue in these proceedings.

170. When cross-examined on their proposed SBG adjustment, OPG witnesses confirmed that it was something they had first considered in 2009. OPG did not include SBG in their previous forecasts because, as one OPG witness stated, "I think it's fair to say there wasn't any SBG, or virtually nil. So you couldn't include something that didn't exist." Prior to 2009, the last time SBG was a factor was back in the early 1990s.[75] As for 2010, OPG confirmed that, year to date, SBG was negligible.[76]

171. Moreover, and more importantly, OPG witnesses ultimately conceded that SBG "is more of a real-time phenomena. You can't absolutely declare in advance that it will happen. You need to wait until the real-time conditions unfold."[77] Consequently, not only was SBG not a factor prior to 2009 and only a negligible factor in 2010, OPG cannot "absolutely declare in advance" that it will be a factor in 2011 and beyond.

172. If OPG cannot declare in advance that SBG will happen, then it is inappropriate for it to be permitted to recover the estimated costs of SBG in its test period hydroelectric revenue requirement. For this reason, Board Staff has urged that OPG should not be allowed to recover for prospective SBG losses through this application, but rather that it should seek to recoup any actual future losses suffered due to SBG in future applications, through the operation of a new SBG deferral account.

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[75] Transcript, Volume 2, p. 49.

[76] Transcript, Volume 2, p. 40.

[77] Transcript, Volume 1, p. 69.

173. Excluding SBG reduces the hydroelectric test period revenue requirement by \$32.5M.[78]

174. At this time, there is no credible historical track record to support OPG's projected 1.3 TWh SGB adjustment. OPG's witnesses acknowledged that the planned expansion of renewable wind generation in Ontario is expected to be the "main driver" of SBG. The Board heard testimony from OPG witnesses that one of the reasons that OPG is required to reduce its hydroelectric production when the province finds itself in a surplus electricity situation, is because the province has signed contracts which do not allow wind generation to be curtailed. The inability to reduce wind generation and the practical issues with curtailing nuclear generation leads to the spilling of water which is the cheapest and most environmentally friendly form of electricity generation. The policy decision the province has made to favour wind generation is operating to cause electricity prices to be higher than they would be if the sources of wind power could be curtailed, without pay obligations, so that hydroelectric generation capacity would not need to be wasted. It is arguable that the province has made an electricity-related procurement decision that is having an adverse impact on the regulated assets of its own electricity utility. We regard it as questionable as to whether an utility owner that causes adverse impacts on its own utility can recover the costs of those adverse impacts in regulated rates.

175. In light of the uncertainty and unreliability inherent in the SBG projections made by OPG, the costs associated therewith should be rejected in their entirety.

176. Even though we will be questioning the amount, if any, pertaining to SBG that should be found to be recoverable in the regulated payment amount, we support, for tracking purposes only, the recommendation by Board Staff to establish a SBG deferral account to record the actual costs of SBG that OPG occurs during the test period. We

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78 Exhibit L, Tab 5, Schedule 24.

reserve our rights in their entirety with respect to the amounts, if any, recorded in that deferral account to be subsequently recovered in regulated rates.

C. Major Unforeseen Events

177. The second major initiative developed by OPG in 2009 was the development of the MUE adjustment. Not only is the MUE adjustment unprecedented – either in Ontario or any other jurisdiction - its impact on OPG's revenue requirement is more than 6 times greater than SBG adjustment.

178. OPG has claimed that the MUE adjustment will increase the certainty and accuracy of their nuclear production forecasts. Yet, on cross-examination, OPG officials agreed that their 'major unforeseen events' could be characterised using the term coined by former U.S. Defence Secretary Donald Rumsfeld as "unknown-unknowns", meaning they are issues that they do not know they do not know about.[79]

179. On this basis alone, we do not understand how OPG can claim that introducing the MUE adjustment would result in greater accuracy in its production forecasts. In truth, the MUE concept actually introduces uncertainty into the nuclear production forecasts – as evidenced by the difference in the total production figures in the OPG business plan and the present application.

180. The financial impact of the MUE adjustment is massive. OPG has asked the Board to allow a 2.0 TWh per year allowance for both 2011 and 2012. OPG has confirmed that a 1.0 TWh reduction in nuclear generation represents a drop in revenues of $50M per annum. As such, the total financial impact of a 2.0 TWh per annum reduction over the test period is $200M.[80]

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[79] Transcript, Volume 6, p. 132.

[80] Exhibit L, Tab 5, Schedule 25.

181. For an adjustment of this size, one would have expected that OPG would have done a commensurate degree of due diligence. However, this was not the case. Under cross-examination, OPG witnesses confirmed that the only analysis which led to the creation of the MUE adjustment concept was done by OPG's internal production forecasting group. No outside experts were consulted.[81]

182. Notwithstanding that the total financial impact of the proposed MUE adjustment resulted in a $200M increase in OPG's revenue requirement, the production forecast group did not even put their findings down in a written report. Rather, according to OPG witnesses, the only written record of the analysis undertaken is the table which was included as part of OPG's pre-filled evidence.[82]

183. OPG witnesses also confirmed that they were not aware of any other utilities, either in Ontario or any other jurisdiction, who used the MUE adjustment in their production forecasts. Alarmingly, the extent of their 'investigation' into whether other utilities used the same or similar model consisted solely of OPG officials talking to "various folks", mostly station planners, at different conferences.[83]

184. Leaving aside the extremely limited amount of analysis and consultation done by OPG in regards to the MUE adjustment, the Board should be troubled by the testimony given by OPG witnesses under cross-examination – testimony which strongly suggests that OPG does not actually expect to suffer the losses for which they are seeking to be compensated.

185. The nuclear production forecast contained in OPG's application, which incorporates the MUE adjustment, states that OPG's total nuclear production will be 48.9 TWh in 2011 and 50.0 TWh for 2012. Yet, OPG has told its Board of Directors that

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[81] Transcript, Volume 6, pp. 133 and 134.

[82] Transcript, Volume 6, p. 133.

[83] Transcript, Volume 6, p. 137.

it will 'stretch' itself to achieve nuclear production of 50.9 TWh in 2011 and 52.0 TWh in 2012.[84]

186. In fact, one witness testified that they *expect* to get 50.9 TWh and 52 TWh in those years.[85] If OPG *expects* to achieve the higher stretch target, the only logical inference the Board can draw is that it *does not expect* to suffer 2.0 TWh of outages due to major unforeseen events.

187. OPG cannot have it both ways. They cannot say on the one hand that it is more accurate to say that they will hit 48.9 TWh and 50.0 TWh, but then on the other say that they *expect* to actually hit 50.9 TWh and 52 TWh.

188. To be clear, if the Board allows the 2.0 TWh MUE adjustment and OPG then reaches, as expected, its 2.0 TWh higher stretch target – they will be compensated twice. They will not only get the $200M in MUE adjustment revenues, they will get the $200M in regular revenues from electricity that it actually generates.

189. When asked why OPG is asking for a 2.0 TWh adjustment if they actually expect to meet their so-called 'stretch targets', witnesses said that it was intended to drive their stations towards higher performance in producing generation for both the company and the province. [86]

190. This is consistent with the pre-filled evidence included with OPG's application which said that the performance of OPG Nuclear's management will be assessed in part against its ability to achieve the stretch targets – including payouts under the Annual Incentive Plan.[87]

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[84] Transcript, Volume 6, p. 83.

[85] Transcript, Volume 6, p. 82.

[86] Transcript, Volume 6, p. 82.

[87] Exhibit E2, Tab 1, Schedule 1, p. 11.

191. Put another way, OPG has developed an incentive scheme for its Nuclear management personnel pursuant to which they could potentially receive some form of bonus under their Annual Incentive Plan if they hit their stretch targets. OPG has then used the MUE adjustment to lower the production estimates to 2.0 TWh below the stretch target. All the while, however, they actually expect to hit the higher stretch target.

192. Consequently, if OPG hits the 'stretch targets' – as they expect – the Nuclear management personnel will be in line to get a bonus notwithstanding that they have not actually achieved any performance increase over what was actually budgeted.

193. Incredibly, OPG continues to advance their fictitious argument that the 2.0 TWh stretch performance targets, which are used to incent OPG's Nuclear management, "do not include an adjustment for major unforeseen events".[88] The stretch targets only exist because of the 2.0 TWh gap created between the MUE adjusted production forecast and the non-MUE adjusted forecast.

194. Absent the MUE adjustment, there would be no stretch performance target, a fact which is demonstrated by the fact that the description of the stretch performance targets is found in the section of OPG's application entitled "Forecast for Major Unforeseen Events".[89]

195. Lastly, we also share the concerns expressed by Board Staff that the nuclear production forecast incorporating the MUE adjustment is significantly and materially different than the production forecast in the business plan approved by OPG's Board of Directors. If OPG cannot clearly demonstrate that the MUE adjustment has been approved by its own Board of Directors, then it should not be approved by this Board.

196. For all of these reasons, we request that the Board reject OPG's MUE proposal, and direct that OPG's revenue requirement for the test period be established on the

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[88] OPG Argument-in-Chief, p. 38.

[89] Exhibit E2, Tab1, Schedule 1, p. 11.

basis of 50.9 TWh of nuclear production in 2011 and 52 TWh of nuclear production in 2012.

XI. DESIGN OF PAYMENT AMOUNTS

A. Hydroelectric Incentive Mechanism

197. OPG's current hydroelectric incentive mechanism was approved by the Board in EB-2007-0905. At that time, the Board required OPG to present a review of the incentive mechanism that includes an examination of the impact of the incentive structure on OPG's operating decisions. We submit that the evidence in this case supports a Board finding that the incentive amount OPG receives under the current mechanism is excessive.

198. In EB-2007-0905, OPG forecast that the incentive mechanism would provide $12M of additional revenues for 2009. Actual revenues from the incentive mechanism in 2009 were $23.2M.[90] Similarly, for 2010, OPG forecast $8M of additional revenues.[91] As of the end of August, 2010, OPG had already realized $11M of actual incremental revenue flowing from the incentive mechanism.[92] This evidence demonstrates OPG's propensity to under-forecast incentive mechanism revenues. In these circumstances, it is reasonable to conclude that OPG's forecast for incentive revenues of $13.3M in 2011 and $16.3M in 2012 are probably low.

199. OPG provided little evidence to support a conclusion that the incentive mechanism materially changes its behaviour. OPG confirmed that it would continue to operate under the auspices of the formula that currently underpins its operating decisions, without the benefit of the incentive mechanism.[93]

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[90] Exhibit E1, Tab 2, Schedule 1, p. 7.

[91] Undertaking J1.2.

[92] Transcript Volume 1, p. 25.

[93] Transcript Volume 1, p. 35.

200. Regardless of the fact that the incentive mechanism may be required by OPG to overcome the risk of losses incurred in the operation of the cycle from pump to generate, OPG's success in materially exceeding its forecast revenues indicates that the existing mechanism is, as Board Staff suggests, far too rich.

201. We are concerned that the revised incentive mechanism proposed by Board Staff, which includes forecast thresholds and variable sharing-percentages, is unnecessarily complex. In light of the minimal risks facing OPG, coupled with the absence of substantive evidence establishing how the current incentive mechanism changes OPG's behaviour, the incentive mechanism should incorporate a sharing ratio of 75/25 in favour of ratepayers.

202. In the alternative, if the Board favours Board Staff's approach, then we propose one modification, and that is that the sharing of revenues from zero to OPG's forecast incentive mechanism revenue should be 75/25 in favour of consumers instead of 75/25 in favour of OPG. OPG's share of revenues should only be greater than the share of revenues allocable to consumers when OPG exceeds the incentive revenue forecast and not the reverse as Board Staff suggests.

XII. OTHER REVENUES

A. <u>Segregated Mode of Operation and Water Transactions</u>

203. OPG earns segregated mode of operation ("SMO") revenues by segregating some of its RH Saunders generating units from Ontario and reconnecting them directly into Quebec. To this end, OPG receives SMO revenues from Hydro Quebec.

204. Similarly, water transactions ("WT") occur pursuant to agreements between the New York Power Authority and OPG to maximize energy production from the total water available for generation under international treaties. WT occur for a variety of reasons including maintenance, economic efficiency and climatic reasons.

205. In EB-2007-0905, the Board determined that it was appropriate to incorporate a forecast of the net revenues from SMO and WT in the test period revenue requirement and to allow OPG to retain any incremental revenues achieved during the test period. The Board directed OPG to use the average net revenues over the past three years to forecast the revenue amount for each year to be embedded in the Board-approved payment amount. Incremental revenues beyond the average net revenues over the last three years would accrue to OPG. According to the Board in EB-2007-0905, this approach simplified the regulatory structure by eliminating the need for deferral accounts.

206. In this case, OPG now claims that the use of the three-year historical average will significantly overstate the revenues anticipated in the test period for both SMO and WT. OPG proposes that the SMO forecast of revenues for the test period be base on the actual SMO revenues during the second half of 2009, and that the WT net revenues forecast be based on the actual net revenues for all of 2009. The result of using the latter half of 2009 for SMO and all of 2009 for WT is to reduce the amount to be embedded in the hydroelectric revenue requirement for the test period by $13.7M[94].

207. We submit that OPG's proposal to use 2009 actual results, rather than a three-year average, is inappropriate. We accept that it is difficult to forecast market driven activities. However, the Board in EB-2007-0905 concluded that a three-year average provided a reasonable proxy for such a forecast. This longer time horizon allows for SMO and WT peaks and valleys to be brought into account. We do not accept that reliance on a six-month period for SMO or a 12-month period for WT offers a greater level of accuracy than a three-year average.

208. As such, we urge the Board to direct OPG to incorporate the average net revenues over the last three years for the test period.

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[94] Transcript, Volume 1, p. 39.

209. If, on the other hand, the Board is of the view that an adjustment in its previously approved forecasting methodology is necessary, then we urge the Board to require OPG to adopt a revenue sharing mechanism in conjunction with the changed forecasting methodology whereby customers receive 75% of the net revenue from both SMO and WT transactions in recognition that the assets are included in rate base. This would be in line with other similar sharing mechanisms in the gas industry. In this regard, the Board in EB-2007-0905 agreed with interveners that the analogy of transactional services in the natural gas industry is appropriate in the context of SMO and WT transactions. In both cases, the assets are part of the regulated business and customers pay all of the costs associated with operating these assets. If the Board accepts OPG's position that the current Board approved approach of including the average of the previous three historical years of actual net revenue values for SMO and WT transactions will lead to an over forecast of revenues, then the reasonable alternative is to establish a deferral account that credits 75% of the net revenue received from both SMO and WT transactions to ratepayers.

XIII. DEFERRAL AND VARIANCE ACCOUNTS

A. Tax Loss Variance Account ("TLVA")

210. We begin our submissions with respect to the balances in this deferral account by paraphrasing our understanding of the $341.2M that the Board recorded in the tracking account that the Board established in its May 11, 2009 Decision and Order on OPG's motion to review and vary (the "Review Decision").

211. We understand the amount of $341.2M to be the difference between the combined nuclear and hydroelectric revenue requirements that the Board determined in the EB-2007-0905 Decision with Reasons (the "Payment Amounts Decision"), being a revenue required amount that excluded taxes, and that same amount grossed up for taxes. Said another way, the $341.2M represents the revenue requirement difference between the Payment Amounts Decision revenue requirement grossed up for taxes and the Payment Amounts Decision revenue requirement excluding taxes. The Payment

Amounts Decision covers the 21-month test period between April 1, 2008 and December 31, 2009.

212. The TLVA and the $341.2M recorded therein, relate exclusively to the 21-month test period expiring December 31, 2009. There is no Board Decision that establishes a TLVA for 2010. There is no Board Decision that continues the Review Decision TLVA for 2010. OPG never applied for any so-called TLVA coverage for 2010.

213. Nevertheless, OPG has submitted its application for relief, in this case, on the premise that the Board authorized a deferral account that would permit it to record a gross up for income taxes related to Board-approved 2008/2009 test period payment amounts that prevailed in 2010. No such account was ever asked for, or authorized.

214. Moreover, had OPG asked for such an account to be established for 2010, then parties opposite in interest would have resisted on grounds argued in this case to the effect that none of the TLVA, for the period ending December 31, 2009, is recoverable in regulated payment amounts. In other words, a formal request by OPG for 2010 coverage would have triggered the debate in which we are currently engaged in this case. That is probably why OPG deliberately refrained from seeking relief and instead sought to proceed in the way that it did.

215. The TLVA issues in this case are with respect to the amounts, if any, to be cleared to ratepayers from the total amount OPG has recorded therein for the period April 1, 2008 to December 31, 2010 of $485.8M, excluding interest.

216. For the period April 1, 2008 to December 31, 2009, OPG contends that only $50.3M of the $341.2M is not recoverable from ratepayers and that the balance of $290.9M is recoverable in regulated payment amounts. OPG contends that the full amount of $195M, that it has recorded for 2010, is also recoverable in regulated payment amounts. Accordingly, the total amount OPG says is recoverable, excluding

interest, is $485.8M. With interest, this amount increases to $492.0M, and OPG attributes $78.7M thereof to hydroelectric and $413.3M to its nuclear facilities.[95]

217. Of the $485.8M OPG claims it can recover in regulated payment amounts, it proposes to recover $230.2M over the 21-month period between March 1, 2011 and December 31, 2012, and the balance of $253.6M in the 24-months between January 1, 2013 and December 31, 2014.

218. To ascertain how much, if any, is recoverable in the regulated payment amounts the Board determines, in this case, one first needs to consider the principles and circumstances that gave rise to the establishment of the TLVA covering the period April 1, 2008 to December 31, 2009.

219. This then takes us back to the Payment Amounts Decision and OPG's Motion to Vary that led to the May 11, 2009 Review Decision. OPG moved to vary the mitigation feature of the Payments Amounts Decision on grounds that it and other parties had been afforded no opportunity to argue the amount of mitigation that was appropriate, in the event that its prior period tax loss calculation approach was rejected. It was clear that OPG had quantified the mitigation by linking it to its prior period tax loss approach. The Board adopted a different approach to quantify the mitigation amount without affording OPG and others an opportunity to argue the matter.[96]

220. OPG's evidence in the Payment Amounts case was premised on an acknowledgment that a 19% increase in payment amounts was excessive.[97] Using its prior period tax loss calculation approach, OPG derived a mitigation amount of $228M. Parties opposite in interest to OPG accepted OPG's calculated mitigation amount of $228M. As a result, there was, in essence, an implied agreement between OPG and

[95] OPG's Argument-in-Chief, p. 81.

[96] Counsel for SEC canvassed the history in some detail, Transcript, Volume 14, pp. 75 to 109. Documents pertaining thereto are found in Exhibit K14.2.

[97] Exhibit K14.2, p. 11.

parties opposite in interest that the mitigation amount should be quantified in the order of $228M.

221. In the Payment Amounts Decision, the Board rejected OPG's tax loss calculation approach. In doing so, it relied upon and applied the principle that costs should be ascribed to those who realize the benefits.

222. In adopting a different approach, without affording OPG or other parties an opportunity to make prior submissions, the Board effectively re-opened the issue pertaining to the appropriate mitigation amount for the 21-month test period expiring December 31, 2009. In its motion to vary, OPG asked the Board to allow it to record $341.2M in a variance or tracking account so that matters pertaining to the calculation of the appropriate amount of mitigation for the 21-month period expiring December 31, 2009, could be resolved in OPG's next case. There was no discussion during the argument of the Motion to Vary about what the total mitigation amount should be. The discussion was primarily about whether or not a tracking account was needed to achieve the objective of deferring the appropriate quantification of the mitigation amount to a future proceeding.

223. During the course of the submissions on the Motion to Vary, counsel for OPG described the variance or tracking account that it was asking the Board to approve as follows:

> **"Mr. Penny: No. The methodology in terms of – what the numbers actually are at the end of the day, in our submission, would be a matter – if we get what we're asking for in part 1 of our motion and there's a recognition that this proposal was rooted in the calculation of tax losses, and there is then a deferral account, the actual calculations will all be reviewed, subject to – and detailed evidence filed.**
>
> **My friends will have the ability to respond, to cross-examine witnesses and <u>do everything else, to challenge whatever methodology OPG uses</u>. (emphasis added)**
>
> **Mr. Wetston: That proposal is for the next case?**
>
> **Mr. Penny: Yes. Absolutely. The actual numbers is not for this case. It's – what we're getting at is the principle in this case.**

Mr. Wetston: Thank you."[98]

224. Again, at p. 64 of the transcript, counsel for OPG described the mechanism as follows:

> **"OPG will, in due course, come forward with its calculations, in accordance with the Board's decision on how to do that. <u>All parties will be at liberty to challenge those calculations, be it methodology, arithmetic or otherwise, as I've said</u>. All OPG is seeking at this stage is the variance account to enable that consideration to be made, once the analysis is done and subject to a full and open review.**
>
> **It is, as Mr. Thompson wishes, without prejudice to the rights of any party in a future proceeding to challenge how the Board's directions have been applied."[99]**

225. Moreover, during the course of the argument of the Motion to Vary, counsel for OPG acknowledged, on a number of occasions, the validity of the principle that costs should follow benefits, being the principle that prompted the Board to reject the approach OPG had initially adopted to calculate the mitigation amount at $228M.

226. This case marks the first opportunity for ratepayers to argue an approach to calculating the mitigation amount, for the 21-month test period ending December 31, 2009, that differs from the approach OPG applied to produce the $228M mitigation amount that parties opposite in interest to OPG had accepted as reasonable.

227. Adhering to the "costs must follow benefits" principle that gave to the Board's rejection of the approach OPG initially applied, counsel for SEC convincingly demonstrates that ratepayers are being burdened with an extremely substantial amount of tax costs related to benefits they have not and will never receive. An application of the "costs must follow the benefits" principle requires OPG to credit ratepayers for this tax cost burden. Counsel for SEC has established that credit amounts to which ratepayers are entitled, as a result of applying the "costs must follow the benefits"

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[98] EB-2009-0038, April 3, 2009 Transcript, pp. 19 and 20.

[99] EB-2009-0038, April 3, 2009 Transcript, p. 64.

principle, are more than sufficient to eliminate the entire balances that OPG has recorded in the TLVA for the 21-month period ending December 31, 2009 and for 2010, as well as the balances that have been recorded in the Bruce Lease Net Variance account; and there are still some unused credit amounts remaining.

228. We agree with counsel for SEC that the Board ought to adhere to the "costs must follow the benefits" principle that gave rise to the deferral of the calculation of the appropriate mitigation amount to this proceeding. SEC's analysis establishes, beyond any reasonable doubt, that no amounts recorded in the TLVA, and in the Bruce Lease Net Revenues deferral account should be recoverable from ratepayers.

229. Credits payable to ratepayers for tax burdens they have absorbed and will continue to absorb, with respect to benefits they did not and will not enjoy, exceed the balances in those deferral accounts. Nothing is recoverable. Moreover, these credits are more than sufficient to cover the tax provision OPG claims for the 2011 and 2012 test period, and we support the submission we understand counsel for SEC will be making in support of a disallowance of those items.

230. Separate and apart from the approach advocated by counsel for SEC, there is another approach that the Board could consider that also eliminates the amount of the TLVA balance for the 21-month period ending December 31, 2009. This separate approach stems from OPG's evidence in the Payment Amounts case that a 19% increase in revenue requirements was excessive, and needed to be reduced by about 27% in order to bring the revenue requirement increase to about 14.8% and within the ambit of reasonableness.[100] The outcome of this approach can be estimated by taking the combined revenue deficiency claimed by OPG in the initial case of $1,025.7M shown at page 5 of the Payment Amounts Decision, grossing it up for income taxes and then applying the 27% reduction amount to limit the payment amount increases to the

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[100] Exhibit K14.2, at p. 11, lines 5 and 6, and 22 and 23.

level of about 14.2% that OPG actually applied for in its initial application. At a 30% tax rate, we estimate the "taxes included" deficiency to be about $1,333M and the mitigation amount, at 27%, to be about $360M, which exceeds the $341.2M recorded in the TLVA. Under this approach, no amount is recoverable in the payment amounts that the Board determines in this proceeding.

231. This approach quantifies the mitigation amount in relation to a combined revenue deficiency, grossed up for taxes, and on a taxes included basis, at a level that prevents OPG from recovering more than the 14.2% increase it actually applied for in its initial 2008/09 application. Of the $341.2M recorded in the tracking account, nothing would be recoverable from ratepayers.

232. As already noted and quite apart from the submissions of counsel for SEC, there is nothing recoverable from ratepayers for 2010 because OPG did not either ask for or obtain a Board Order extending the TLVA, or a similar account into 2010. The TLVA that is the subject matter of the Board's Review Decision ceased to operate as of December 31, 2009. In this connection, we wholeheartedly support and adopt the submissions made by counsel for VECC. The motion that the TLVA continues beyond December 31, 2009 with a specific Board Order authorizing its continuance is discredited by the fact that OPG seeks in this case a Board Order authorizing that the account be continued.

233. Moreover, as already noted, had OPG asked to extend the TLVA beyond December 31, 2009, the response by parties opposite in interest would have been to resist the proposal and to engage, at that time, in the debate about the proportion of the $341.2M that, if any, could or could not be reasonably allocated for recovery from ratepayers. Unless and until that debate is determined, the payment amounts that prevails in 2010 are the payment amounts the Board approved in its initial decision.

234. In addition, for reasons outlined above, that debate leads to an allocation of a portion of the $341.2M to ratepayers that is zero. This is but another reason why OPG is not entitled to recover any of the amounts that it has purportedly recorded in a TLVA for

2010. It matters not whether OPG simply overlooked asking for an extension of the account or consciously refrained from requesting such relief.[101] Because it did not obtain an extension of deferral account protection for 2010, the $195M that OPG has recorded in the account for 2010 is not recoverable.

235. In summary, amounts recorded in the TLVA are recoverable. OPG's claims should be rejected and no Order should be made authorizing a TLVA in the 2011/2012 test period on OPG requests.

B. Bruce Lease Net Revenue Variance Account

236. As counsel for SEC has no ably demonstrated, that the tax cost burden on ratepayers for benefits they did not and will not receive is more than sufficient to offset the amounts recorded in the Bruce Lease Net Revenue Deferral Account in their entirety. Accordingly, we submit that no funds recorded in this deferral account are recoverable in regulated payment amounts.

C. Pension and Other Post-Employment Benefits Cost Variance Account

237. OPG asks the Board to establish an account to record the difference between the pension and other post employment benefits ("OPEB") costs as reflected in the approved payment amounts and the actual pension and OPEB costs for the prescribe facilities and associated tax impacts. In EB-2007-0905, OPG's request to establish such an account was denied. In rejecting that request, the Board acknowledged that, while changes in the discount are outside OPG's control, that is true of many elements of OPG's proposed revenue requirement. Furthermore, the Board also recognized that in the event that OPG's actual pension and OPEB costs during the test period are materially in excess of the amounts included in the revenue requirement, OPG would retain the ability to apply to the Board.

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[101] Transcript, Volume 14, p. 106.

238. The fact that OPG, in an Impact Statement, now forecasts a $262M difference between the forecast of pension and OPEB costs included in the application and its updated projection of such costs should not prompt the Board to grant the variance account protection OPG requests. In this connection, we agree with and support the submissions of Board Staff and others to the effect that the increased amount that OPG is now anticipating for the test period be calculated on the more stable cash basis to which Board Staff refers in its submissions, and included in the 2011/2012 revenue requirement amounts. The request for a variance account in which to record these costs should be rejected.

XIV. COSTS

239. CME requests an award of its reasonably incurred costs of participating in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 6TH DAY OF DECEMBER, 2010.

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