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BY E-MAIL

May 26, 2011

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Ontario Power Authority
2011 Expenditure and Revenue Requirement Submission
Ontario Energy Board
File Number EB-2010-0279**

In accordance with the Board's oral decision on May 13, 2011, please find attached Board Staff's submission in the above proceeding. Please forward the following to the Ontario Power Authority and to all other registered parties to this proceeding.

Yours truly,

Original signed by

Michael Bell
Project Advisor, Applications and Regulatory Audit

Encl.

BOARD STAFF SUBMISSION

ONTARIO POWER AUTHORITY 2011 REVENUE REQUIREMENT SUBMISSION

EB-2010-0279

May 26, 2011

I. Background

On November 2, 2010, the Ontario Power Authority (the “OPA”) filed with the Ontario Energy Board (the “Board”) its proposed 2011 expenditure and revenue requirement and fees for review pursuant to subsection 25.21(1) of the *Electricity Act, 1998* (the “Electricity Act”). Pursuant to subsection 25.21(2) of the Electricity Act, the OPA is seeking the following approvals from the Board:

- approval of a net revenue requirement comprised of the proposed 2011 operating budget of \$64.1 million and a number of adjustments that result in a net amount of \$79.861 million;
- approval of a \$0.523/MWh usage fee, which is a decrease from the approved usage fee of \$0.551/MWh for 2010 and to recover its usage fees from export customers, in addition to Ontario customers;
- if necessary, interim approval of the usage fee described above, or such further or other interim orders as the Board may deem appropriate;
- approval of registration fees of up to \$10,000 per proposal for electricity supply and capacity procurements;
- approval of non-refundable application fees for the Feed-in-Tariff program of \$0.50/kW of proposed Contract Capacity, having a minimum of \$500 and to a maximum of \$5,000;
- approval of proposed 2011 capital expenditures of \$2.2 million;
- approval of its proposal to recover through fees the balances of the 2010 Forecast Variance Deferral Account;
- approval to continue to recover the balance of Retailer Settlement Deferral Accounts over three years;
- approval of establishment of the 2011 Retailer Contract Settlement Deferral Account, of the 2011 Retailer Discount Settlement Deferral Account, of the 2011 Government Procurement Costs Deferral Account and of the 2011 Forecast

- all necessary orders and directions, pursuant to the *Ontario Energy Board Act, 1998* and the Board's Rules of Practice and Procedure, as may be necessary in relation to this submission, and execution of the approvals requested in the Business Plan.

On January 11, 2011, the Board issued its Board Approved Issues List. The Board held an oral hearing on May 9, 10, 12, and 13, 2011.

What follows are the written submissions of Board staff.

II. The Legislative Framework

The Board's power to review the OPA's proposed fees is set out in section 25.21 of the Electricity Act:

25.21 (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22.

Board's powers

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations.

Same

(3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the OPA.

Changes in fees

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board.

Hearing

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so.

In considering the approval of the OPA fees, the Board should also be guided by its electricity objectives under section 1 of the *Ontario Energy Board Act, 1998* (the “OEB Act”):

Board objectives, electricity

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.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer’s economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities.

Facilitation of integrated power system plans

(2) In exercising its powers and performing its duties under this or any other Act in relation to electricity, the Board shall facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*.

III. Issues Decision

In the Issues decision that was issued on January 11, 2011, the Board stated the following:

The Board finds that its mandate in relation to the review of the OPA’s fees application comes from section 25.21 of the Electricity Act. The Board agrees that section 1 of the OEB Act informs the Board in the exercise of that mandate. However, Section 1 is not, in the Board’s view, a source of independent or

incremental responsibility that can override the direction that has been provided by the legislature in relation to the Board's mandate as set out in section 25.21 of the Electricity Act. This is confirmed by the wording of section 1 itself, which refers to the objectives as guiding the Board "in carrying out its responsibilities under" the OEB Act or any other Act.

The Board finds that its mandate in this case is limited to approval of the OPA's administrative fees, which comprise approximately 3% of the OPA's total annual spending. However, the Board is of the view that an assessment of the OPA's administrative fees must require an examination and evaluation of the management, implementation, and performance of the OPA's charge-funded activities. This is necessary because the OPA's administrative and non-administrative activities that are funded by fees and charges, respectively, are unavoidably linked. It is the Board-approved fees that give the OPA the means to acquire and allocate the resources (e.g., staff) that are required to undertake its various responsibilities, resulting in charge-funded activities. The Board finds that an assessment of the performance of the OPA's charge-funded activities is a necessary, legitimate and reasonable tool for determining the effectiveness of the OPA's utilization of its Board approved fees.¹

IV. Submission

Board staff has the following 3 concerns in regards to recent initiatives that are related to whether the OPA's proposed expenditure and revenue requirements and fees are appropriate to fulfill its Business Plan for the fiscal year under review in this proceeding:

- (1) Program Administration;
- (2) External Communications; and
- (3) Efficiency Metrics.

Program Administration

¹ EB-2010-0279, Issues Decision and Procedural Order No. 2 , January 11, 2011

As noted above, Board staff has concerns regarding the administration of the FIT program and the ECT.

In the case of the ECT, staff notes that the OPA's application states as a 2011 milestone that "The first ECT will be executed, with the first set of results available in the second quarter of 2011."² Also, staff noted in its interrogatories that in the summer of 2010, the OPA stated that the first ECT was planned for completion in the first quarter of 2011.³ In addition, Board staff notes that in 2010, the OPA stated that the first ECT would start in early August 2010.⁴

However, in response to Board staff interrogatory #4, the OPA stated that "The first ECT is not expected to start before March 2011."⁵ And, in fact, the ECT did not commence in March 2011 and during cross-examination the OPA (Mr. Cronkwright) stated that they "don't currently have an update on a revised date for launching the ECT at this point," but indicated they anticipated that "it would be within six months."⁶

Staff also observes that the completion of the ECT has implications for the OPA's FIT program targets for the fiscal year under review. The OPA stated in its pre-filed evidence that a 2011 milestone for Strategic Objective #3 is to "Continue to assess FIT and microFIT applications and execute contracts for additional capacity up to 850 MW." In response to Board staff interrogatory 18(a) the OPA stated that this 850 MW of capacity would be realized through "the results of the Economic Connection Test ("ECT") and the processing of new Capacity Allocation Exempt ("CAE") FIT applications and microFIT applications."⁷

As a result, Board staff is of the view that, given that a portion of the OPA's proposed expenditure and revenue requirements and fees for allocating resources towards conducting the ECT, that the persistent delays and the uncertainty of the timeline for the ECT and its implication for the FIT program, raise concerns regarding the administration and oversight of this initiative. In turn, this puts into question whether the OPA's proposed expenditure and revenue requirements and fees are appropriate to fulfill this particular component of its Business Plan. Staff would request the OPA clarify in its

² Exhibit B, Tab 1, Schedule 1, Page 7 or 10.

³ Board Staff Question #4.

⁴ OPA, "June 1, 2010 - Program Update": <http://fit.powerauthority.on.ca/june-1-2010-program-update>

⁵ Exhibit I, Tab 1, Schedule 4, p. 2 of 3.

⁶ Cross by Board Staff, p. 187, lines 27-8, May 9, 2011.

⁷ Exhibit I, Tab 1, Schedule 18, p. 1 of 2.

reply submission why it is of the view that the Board should approve the OPA's proposed expenditure and revenue requirements and fees when there remains uncertainty that the ECT will be conducted in this fiscal year as stated in the business plan.

Staff also has concerns regarding the administration of the FIT program. First, staff notes that under cross-examination the OPA noted that its February 24th, 2011 announcement of the procurement of 874 MW of capacity under the FIT "was anticipated to have been done in 2010"⁸ and did not count towards the OPA's 2011 850 MW procurement target. Again, Board staff sees this type of delay as raising concerns about whether resources have been appropriately allocated to application processing capability.

External Communications

Board staff has concerns with the OPA's current policies towards raising public awareness with respect to directives the OPA receives from the Ministry of Energy and the OPA's work in general. Staff notes that the OPA's 2011 Business Plan states that one of its guiding principles of transparency is that its "communications both internally and externally are clear, candid, open and reliable."⁹ However, staff notes that directives the OPA receives from the Ministry of Energy and other materials are posted on sub-pages of the OPA's website without any communication to stakeholders and the public that a posting has been made. During cross-examination, the OPA staff stated that they were not "aware of any communication vehicle that we have to notify everyone of a directive."¹⁰

Staff submits that currently the OPA does not have adequate protocols for informing stakeholders and the public more generally regarding all the important materials it posts on its website, including, but not limited to, directives the OPA receives from the Ministry of Energy. Therefore staff suggests that the OPA develop a communication system, possibly similar to the Board's own "What's New" service, that would inform stakeholders when new documents have been posted to its website.

Efficiency Metrics

⁸ Cross by OSEA, p. 65, lines 3-4, May 9, 2011.

⁹ Exhibit A-2-1, Page 8 of 52

¹⁰ Cross examination, p. 198, lines 24-26. May 9, 2011.

Board staff is of the view that the efficiency metrics currently provided by the OPA are of little utility with respect measuring OPA performance. For example, in response to Board staff interrogatory 27(a) the OPA stated that:

The efficiency metrics provide a performance measure outlining the achievements in conservation and generation attained on both a 'per employee' and a 'per budget dollar' basis. The rate at which the OPA is adding conservation and generation resources is increasing faster than the rate at which the OPA is adding additional employees, and the OPA's budget is decreasing. As a result, the efficiency rates outlining the conservation and generation resources attained on both a 'per employee' and 'per budget dollar' basis are improving year-over-year. This is an indicator of increasing efficiency.

Staff submits that the OPA's response indicates that the efficiency metrics provide a very narrow view of efficiency that relates only to the rate at which the OPA acquires conservation and generation resources. The current efficiency metrics provide no information regarding whether the resources acquired have been procured in an efficient manner that provides value-for-money for the ratepayers, fulfill the OPA's mandate, or meet any of the OPA's strategic objectives. For example, staff observes the OPA's current efficiency metrics would show an "increase" in efficiency if the OPA reduced FTEs, but did not acquire any additional resources. Although efficiency is considered to some extent for conservation procurement through the application of the TRC and PAC tests, this does not apply on the generation procurement side of the equation.

Staff submits that the OPA should be encouraged to develop a broader set of efficiency metrics (i.e., qualitative and quantitative measures) that give a more accurate and complete assessment of the OPA's performance. Such metrics would assist the Board in its task of reviewing the OPA's proposed expenditure and revenue requirement and fees on a going forward basis. For example, the OPA could provide metrics on the costs of the generation and conservation resources it procurements in a format similar the "Generation Procurement Cost Disclosure" it conducted in 2009.¹¹ The 2009 "Generation Procurement Cost Disclosure" provided information regarding dispatch capability, ramping capability, and all in customer payments for seven generation

¹¹ See OPA website: <http://www.powerauthority.on.ca/the-process/generation-procurement-cost-disclosure>

technologies (see Appendix A). Staff suggests that metrics could also include reporting on whether the OPA accomplished its initiatives on time, the process times of FIT and microFIT applications, and measures regarding how effective the OPA has been at communicating with the general public.

There are two possible means by which the Board could encourage the OPA to adopt more helpful efficiency metrics. The first would be to make this a condition of the Board's order approving the proposed fees. Section 23 of the OEB Act states: "The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application." Board staff recognizes, however, that there is some dispute with respect to the Board's powers to impose conditions in an OPA fees case. Section 25.21(2) of the Electricity Act, however, is silent on the matter of conditions: "The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations." In a previous fees case, the OPA argued that section 25.21 of the Electricity Act limited the jurisdiction of the Board to either approving the proposed fees or referring them back to the OPA for further consideration with the Board's recommendations, and that it was not open to the Board to impose conditions. The Board determined in that case that no condition would be appropriate irrespective of its jurisdiction, and declined to directly rule on the jurisdiction question¹².

If the Board is not inclined to impose a formal condition, it would still be open to the Board to recommend to the OPA that it develop better efficiency metrics. If the Board finds the current metrics to be unsatisfactory, it could in effect put the OPA on notice that these metrics might not be sufficient to satisfy the Board in future cases that the proposed revenue requirement and fees are appropriate. Such a recommendation would not, of course, be binding on a future panel. However, it would provide a clear signal to the OPA that its efficiency metrics should be improved or its full recovery of its fees in future cases may be at risk. This would be similar to the Board's direction in the previous fees case (EB-2009-0347) in which it directed the OPA to include more precise and informative documentation of its performance metrics.

All of which is respectfully submitted.

¹² See EB-2007-0791, Decision and Order, May 15, 2008, p. 9.

Appendix A

TECHNOLOGY	DISPATCH CAPABILITY ¹	RAMPING CAPABILITY ²	ALL IN CUSTOMER PAYMENTS - \$/MWh (95% confidence interval)
CHP	Low - Medium ³	Medium	\$114 - \$239
COMBINED CYCLE	Medium	Medium	\$82 - \$164
SIMPLE CYCLE	High	Fast	N/A
NUCLEAR ⁴	Low	Slow	\$50 - \$79
WIND	Low	N/A	\$77 - \$136
BY-PRODUCT & BIO-FUELS ⁵	Medium	Fast	\$75 - \$98
HYDRO	Varies by facility	Fast	\$65 - \$101

1 - Ability to provide more/less resources on request

2 - Speed of response for more/less resources

3 - The dispatch capability of CHP facilities is expressed as a range from low to medium because the OPA contract CHP facilities represent a number of different plant types and configurations

4 - The All In Customer Payment range related to Nuclear technology represents an evaluation per each generating unit

5 - Includes Landfill Gas, Biogas, and By-Product projects

Source: <http://www.powerauthority.on.ca/the-process/generation-procurement-cost-disclosure>