

THE ONTARIO ENERGY BOARD

IN THE MATTER OF sections 25.20 and 25.21 of the *Electricity Act, 1998*;

AND IN THE MATTER OF a Submission by the Ontario Power Authority to the Ontario Energy Board for the review of its proposed expenditure and revenue requirements and the fees which it proposes to charge for the year 2011.

WRITTEN ARGUMENT OF HQ ENERGY MARKETING INC. (“HQEM”)

Introduction

1. In November, 2010 the Ontario Power Authority (“OPA” or “Applicant”) filed an application with the Ontario Energy Board (“OEB”) in respect of its proposed expenditure and revenue requirements and fees for 2011. HQEM applied for, and was granted, intervenor status in this proceeding. HQEM’s interest in this hearing is restricted to issue 7.2: Is the proposal to recover OPA fees from export customers reasonable and appropriate? (“the Proposed Export Fee”).
2. These are the submissions of HQEM on the Proposed Export Fee issue. HQEM submits that the Proposed Export Fee is neither reasonable nor appropriate and therefore should not be approved by the OEB.

Jurisdiction: The Board Regulates OPA Fees

3. Part 2 of the Applicant’s Argument in Chief is entitled “Scope of the Revenue Requirement Proceeding”. This section presents the OPA’s submissions on the Board’s mandate in this proceeding. The OPA submits that the OEB has no jurisdiction to “direct or determine how the OPA should go about its business” (para. 23) or to change or alter the business plan approved by the Minister. The OPA’s conclusion appears to be that the Board’s review of OPA proposed fee is severely restricted to whether the proposed expenditure and revenue requirements and fees are appropriate to fulfill the business plan, which plan, in essence, is beyond the purview of the Board. HQEM submits that the OPA’s submissions on the scope of the Board’s jurisdiction be rejected.
4. The Board has complete authority and discretion not to approve any OPA fee that results from its business plan if the Board believes it is not in the public interest. HQEM submits that the Proposed Export Fee is not in the public interest since its effect is to treat export customers the same as the OPA’s domestic customers and given the OPA’s lack of supporting evidence and absence of any cost causation analysis in connection with its proposed new fee.

Lack of OPA evidence results in no legitimate basis for Board to approve the Proposed Export Fee

5. The OPA's prefiled evidence in support of the Proposed Export Fee was limited to three sentences in the main filing which claim that exporters, for the first time, should begin to pay a fee since they benefit from OPA planning, conservation and procurement activities and because such a fee is consistent with IESO's practice.

OPA, Ex. D, Tab 1, Schedule 1, page 2, lines 14-15, page 3, line 2

6. HQEM submits that the OPA's lack of supporting evidence associated with the Proposed Export Fee suggests that the OPA appears to have forgotten that its fees are in fact regulated by the OEB and that the OPA has the burden to show that the new fee is reasonable and appropriate.
7. In addition, the Board should take note of the fact that the OPA has conducted no stakeholding on its Proposed Export Fee. When the issue of stakeholding was raised during the OEB process, the positions articulated by the OPA were contradictory. On the one hand the OPA witness suggested that the OEB hearing itself is the forum for stakeholder dialogue about the Proposed Export Fee (which in any event is clearly inadequate, inappropriate and contrary to spirit, nature and purpose of proper stakeholding), but on the other hand the OPA argued against an oral hearing in its letter to the Board dated April 6, 2011. HQEM suggests the absence of any meaningful stakeholding process combined with the contradictory nature of the OPA evidence on this point are further indication that the entire Export Fee proposal is more a reflection of the OPA "testing the waters" on a new fee as opposed to a thoroughly thought-through and planned cost recovery exercise based on established methodologies and accepted regulatory principles and approaches.

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APPrO IR #2

8. The OEB's review process of proposed OPA fees is not in the nature of a simple procedural formality or a "rubber stamp" approval process. It is unlike the OEB reviews of the former Ontario Hydro where revenue requirement proceedings and the resulting decisions of the Board were non-binding on the applicant (Board decisions took the form of non-binding recommendations to the Minister of Energy). Under the *Electricity Act* the Board must approve OPA fees before the OPA can levy them. Specifically, section 25.21 (4) of the *Electricity Act*, which was not cited by the OPA in its Argument in Chief, states "The OPA shall not establish, eliminate or change any fee without the approval of the Board." This section was also referred to in Board Staff's Submission, page 3.

9. Because the Board must approve the Proposed Export Fee, the Board is empowered to bring to bear its typical array of considerations and criteria in deciding whether or not to approve an OPA fee. This includes the requirement to be guided by the *OEB Act* section 1 objectives along with the Board's traditional regulatory methodologies which it applies on a routine basis (such as cost causality principles). As Mr. Todd testified, even if one were to accept the OPA's argument that it is somehow different from other regulated entities before the OEB, one would not conclude from this that the parties who ultimately pay OPA costs would not expect that the fees imposed upon them by the Board would be anything other than fair and reasonable based on generally accepted regulatory principles.

Transcript Volume 2, May 10, pages 62 -63

10. As applicant, the OPA has the burden to show the Board that its Proposed Export Fee is reasonable and appropriate. HQEM submits that the OPA has failed to discharge the onus upon it and that taken together with the Elenchus expert witnesses evidence, discussed below, leads to the result that the Board should not approve the Proposed Export Fee.

Ex. K2.1 Elenchus Report

Improving domestic 2011 OPA Fee impact optics is not a valid basis to approve the Proposed Export Fee

11. Under cross examination the OPA witness was asked to explain why, 6 years since the OPA was established and after multiple OPA fees applications to the OEB, the OPA has now decided to change its position to attempt to recover costs from exporters. Mr. Farmer testified that the reason for the change is that it was only this application year that the OPA realized, for the first time, that the IESO was charging exporters and the OPA was not, so the OPA wanted to "reconcile the difference" between the two organizations. This rationale should not be accepted by the Board as a legitimate basis to impose the Proposed Export Fee. As discussed further below, the IESO and OPA are very different organizations having very different legislative mandates, roles and responsibilities and it should be no surprise to anyone that these different organizations would have different fees and charges.

Transcript Volume 2, May 10, page 19, lines 10-17

12. It is suggested that a possible explanation for the OPA change of position with respect to attempting to impose a new fee on exporters is simply related to ongoing and mounting sensitivity about electricity cost increases occurring in Ontario in general. The Proposed Export Fee has the practical effect of mitigating OPA fee increases for Ontario customers. As discussed with Mr. Farmer, without

the Proposed Export Fee the OPA's 2011 usage fee would rise by 3.7%. However if exporters are charged the Proposed Export Fee the OPA's 2011 usage fee declines by 5% by spreading OPA costs to customers outside of Ontario. While the Proposed Export Fee may improve the optics around 2011 OPA fee impacts, this outcome in no way justifies approval of the Proposed Export Fee.

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Expert Evidence Recommends Against Approval of Proposed Export Fee

13. Mr. John Todd and Mr. Mike Roger of Elenchus Associates Inc. ("Elenchus"), appeared as expert witnesses at the hearing in support of their report filed earlier in this proceeding. Elenchus recommends that the Proposed Export Fee not be approved by the Board.

Ex. K2.1, Elenchus Report, page 14.

14. According to Elenchus, any new export fee could only be justified to recover the costs that can be reasonably attributed (or allocated) to defined sets of OPA "fee-payers" based on the same cost causality principles that has guided the Board in its past decisions over many decades. Elenchus witnesses testified that exporters and domestic loads, up to this current proceeding, have always been treated differently by the OPA: domestic loads currently support 100% of the OPA's costs and exporters support none. Mr. Todd and Mr. Roger both support the OPA's historic practice as being more appropriate since the OPA serves mostly if not exclusively domestic loads.

Ex. K2.1 Elenchus Report, Page 7, lines 12 to 14.

15. HQEM submits this conclusion is both appropriate and supported by the OPA itself. The OPA witness acknowledged that the OPA plans the electricity system to meet the peak demand of domestic customers plus a reasonable reserve margin. As Mr. Farmer testified, the OPA does not "specifically plan to a level of exports" nor does it plan in general for the needs of export customers. Accordingly, no OPA costs appear to be directly incurred for the benefit of exporters.

Transcript Volume 2, May 10, page 16, line 28 and page 17, lines 1-3

16. To the extent that it can be clearly demonstrated that exporters benefit from the OPA's activities, by which Elenchus' means that exporters receive services from the OPA that they would not otherwise receive, only then would it be appropriate for exporters to pay a portion of the OPA's costs. However there is no evidence before the Board to show this at this time, except as stated by Elenchus, for the OPA activity related to the planning of the transmission system in Ontario.

Ex. K2.1, Elenchus Report, page 10, lines 8 to 10

17. Mr. Todd and Mr. Roger both testified that exporters do not benefit from the OPA's CDM programs or from the OPA's supply procurement activities. In short, the OPA has tendered no evidence illustrating that those activities are performed with the explicit goal of benefiting or serving exporters. Rather, those activities are performed for the benefit of Ontario consumers only, and would still be performed regardless of exporters' participation in the Ontario wholesale markets.
18. HQEM submits that the sole driver for the OPA's CDM programs and supply procurement activities is to serve the needs and interests of Ontario consumers only, not exporters. As such, those costs should be recovered from Ontario consumers only.
19. Elenchus also recommends that the same rationale and conclusion holds true for the various deferral account balances for which the OPA requests recovery from exporters.
20. Elenchus also noted that the Export Transmission Service Charge for the use of Ontario's Transmission system differentiates between domestic and exporters wherein domestic customers pay a fee more than two times higher than what exporters pay. If, as suggested by the OPA, it is really attempting to "reconcile" its fees, then the necessary implication is that the OPA should have also proposed differentiated fees with higher OPA fees charged to domestic customers and lower OPA fees charged to exporters, since the only OPA activity that can be related to exporters is the planning of the transmission system in Ontario. However, a cost allocation study is needed to decide, how much, if anything, could be fairly allocated to exporters.

Transcript Volume 2, May 10, page 76, line 28, page 77, line 1
Undertaking J2.2

The OPA's Concentric Report

21. The Concentric report advances the proposition that cost causality should be secondary to a full recovery of costs. The report goes on to suggest that full cost recovery is a sufficient criterion to find the OPA proposal to be reasonable and appropriate. Mr. Todd's expert opinion was that these findings are an inappropriate application to Bonbright's well-accepted regulatory principles. As Mr. Todd testified:

While some balancing of the principles is necessary when they're in conflict, the goal of cost allocation and rate design is to reflect all of the principles to the greatest extent possible.

Concentric seems to suggest that as long as the proposed usage fee fully recovers the OPA's costs and is practical, there is no need to even consider fairness or the cost causality principle.

I do not consider this approach to reflect generally accepted regulatory principles.

Transcript Volume 2, May 10, 2011, page. 60

22. The Concentric report also concludes that to allocate OPA costs on the basis of simplicity and beneficiary pays is sufficient. Mr. Todd testified that in his 30 plus years of regulatory experience within Canada he could not think of a single example where fees are established simply on the basis that all customers and customer classes receive some benefit so all pay the same fee even if the benefits received are very different.

Transcript Volume 2, May 10, 2011, page 74, line 28, page 75, line 1-2

23. HQEM submits that the Concentric report and evidence of Mr. Coyne should not be accepted by the Board as an adequate or proper basis to approve the Proposed Export Fee since this evidence does not articulate a correct interpretation or application of generally accepted regulatory principles.

Would it be too complicated to undertake a cost causality study as the foundation for setting an appropriate new fee structure?

24. The OPA appears to suggest that even if the Board were to accept that cost causality principles should apply to the assessment of whether the Proposed Export Fee is reasonable and appropriate, that such a study would be unrealistic given the "breadth and complexity" of the OPA (para. 32). HQEM rejects this unfounded contention. According to Mr. Todd and Mr. Roger, it would not be complicated to set an appropriate fee structure that balances the goals of cost recovery, fairness and efficiency. In their testimony they indicate that it would be acceptable to restrict the cost causality review to two "classes" of fee-payers: domestic loads and exporters. In effect, they argue this would be an evolution on the current practice of not charging exporters at all, by charging exporters a fee that is commensurate with the services rendered and received.
25. Elenchus' witnesses insist that a cost allocation study must be performed before the Board can make any informed decision on the export fee approval requested by the OPA. Absent an appropriate cost allocation study, there is no basis of

which to make a determination on the fairness of the proposed fees, i.e., on whether they are reasonable and appropriate. As Mr. Todd testified:

My general view is that to make decisions in a position of ignorance is not appropriate, and therefore undertaking a study provides a reference point, which, through the rate design process, allows you to ensure and be comfortable that you are making a decision that is fair in terms of the treatment of different categories of users.

Transcript Volume 2, May 10, page 99, lines 1-7

Nature of OPA does not justify the repudiation of traditional Board methodologies and approaches to establish reasonable and appropriate fees

26. The OPA also argues that as “a unique and complex organization”, this justifies the Board’s departure from standard OEB methodologies and approaches when it establishes reasonable and appropriate fees. HQEM disagrees with this premise. There is nothing in the OPA’s mandate that is inherently unique or complex. The OPA, as a distinct entity, may be unusual, but the functions it carries out are by no means unique when compared with other organizations in the electricity industry.
27. The OPA’s functions are basically threefold: a) CDM program design and planning; b) supply adequacy planning, supply procurement and contract management; and c) transmission planning. Each of these three functions individually is being performed by virtually any number of electric, gas utilities and other agencies in North America.

Transcript Volume 2, May 10, page 98, lines 4-12

28. For example, within Hydro-Québec, two of those same functions, namely CDM and supply procurement (including supply adequacy planning, which constitutes a large portion of the OPA’s IPSP costs), are within the responsibility of Hydro-Québec Distribution, and the costs thereof are recover from Québec end-users only. If approved, the OPA’s Proposed Export Fee would have the effect of creating a new cross subsidy where out-of-Ontario customers would be paying for Ontario CDM and supply procurement costs that rightfully should be paid by Ontario consumers only.

Ex. K2.1, Elenchus Report, page 12, lines 3 to 11

The IESO fee structure is not an appropriate precedent upon which to establish the Proposed Export Fee

29. A primary justification which the OPA relies upon in advancing the Proposed Export Fee is that the IESO charges a similar fee so the OPA should as well. HEQM submits that IESO's fees are not an appropriate basis from which to establish OPA fees.
30. The IESO and the OPA have very different mandates and objectives and deal with different sets of parties. The IESO serves wholesale customers very generally, internal and external alike, whereas the OPA serves mostly if not only Ontario end users. The IESO manages the Ontario grid and operates the energy and ancillary services markets in which all market participants participate, whereas the OPA designs CDM programs and procures electric supply for Ontario consumers. One similarity between the two organizations lies with transmission system planning which, as a matter of fact, represents a small portion of the OPA's activities. The IESO, and independent system operators in general, are just too different from the OPA to be considered true comparables.

Ex. K2.1 Elenchus Report, page 10, lines 11 to 26 and
page 13, lines 7 to 16

Conclusions and Relief Requested

31. The proposed extension of the OPA's fee to exporters is unjust, unreasonable, and inappropriate and should not be approved by the Board. The practical effect of the OPA's proposal would be to have external loads pay twice: through their utility bills in their home jurisdictions and through the occasional purchases from the Ontario market through exporters. By contrast, Ontario consumers would receive a subsidy by not having to pay the full OPA costs that clearly belong to them. This, in HQEM's view, is clearly unfair and inequitable to external loads, especially of Quebec loads, which support those same costs in full within Quebec.
32. Therefore, HQEM respectfully requests that the Board not approve the Proposed Export Fee and refer this matter back to the OPA with the following recommendations:
- i) That the OPA be required to initiate a proper stakeholdering process with respect to the Proposed Export Fee. This stakeholdering process would be open to all interested parties.
 - ii) That a simple cost allocation study be undertaken by the OPA based on cost causality principles, as outlined by Elenchus' witnesses, to determine from which class of fee-payers the various OPA functions' costs should be recovered.

iii) That the OPA be required to file its cost allocation study with the Board and parties at its next fees case in the event the OPA determines that it wishes to continue to explore the option of a new fee on exporters.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Original signed by Mark Rodger

J. Mark Rodger
Counsel to HQ Energy Marketing Inc.