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Toronto, May 27, 2011

Kirsten Walli
Board Secretary
Ontario Energy Board
Suite 2700
2300 Yonge Street
Toronto, ON M4P 1E4

Dear Ms. Walli:

RE: Ontario Power Authority (EB-2010-0279)
2011 Revenue Requirement Submission
Intervenor Argument of Association of Power Producers of Ontario

Please find attached the Intervenor Argument of the Association of Power Producers of Ontario to the Ontario Power Authority in the above-noted proceeding.

Yours very truly,

"Signed"

John Beauchamp

JB/mnm

Att.

cc. All Parties to EB-2010-0279

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.

**Final Argument of the
Association of Power Producers of Ontario**

May 27, 2011

Introduction

1. On November 2, 2010, the Ontario Power Authority (“OPA”) filed with the Ontario Energy Board (“Board”) a Submission for Review in respect of its proposed expenditures, revenue requirement and fees for 2011 (“fees submission”).
2. The OPA’s 2011 fees submission is unique in that it is the first time that the OPA has come to the Board with a proposal to decrease its usage fee (from \$0.551/MWh to \$0.523/MWh). The sole reason for the proposed decrease to the usage fee is that the OPA is proposing to collect its revenue requirement from exporters for the first time (in addition to Ontario electricity consumers).¹
3. The OPA’s proposed fee of \$0.523/MWh is derived by dividing the OPA’s net revenue requirement of \$79.9 million by the Ontario electricity forecast of 142.9 TWh, less line losses of 3.1 TWh, plus electricity exports of 12.9 TWh. If exporters are not charged a usage fee (i.e., if the current methodology for establishing the fee is left in place) the proposed usage fee for 2011 is \$0.571/MWh, which is a 3.7% increase from the current 2010 fee.
4. In its simplest terms, the OPA’s decision to extend the fee to exporters (with virtually no basis or rationale provided by the OPA in its initial fees submission filing) would turn what would otherwise be a 3.7% fee increase into a 5% fee decrease.
5. The Association of Power Producers of Ontario (“APPrO”) submits that:
 - despite the political expediency of lowering the usage fee, there is no principled rate-making basis for extending the usage fee to exporters;
 - the OPA has provided no evidence to support extending the usage fee to exporters;
 - the OPA has not considered the implications of instituting the usage fee on export levels, surplus baseload generation or other broader system issues;
 - the OPA’s costs incorporated into the usage fee are not caused by exporters; and,
 - none of the OPA’s activities are carried out for the benefit of exporters, but are solely carried out for the benefit of Ontario consumers.

Consequently, it is APPrO’s submission that the existing methodology for establishing the usage fee should continue (i.e., the fee should only apply to Ontario consumers).

¹ OPA fees submission, Exhibit D-1-1, pp. 2-3.

Background to Proposal for Usage Fee

6. As required by the *Electricity Act, 1998* (“*Electricity Act*”),² the OPA must obtain the Minister of Energy’s approval for its business plan before it comes to the Board with its fees submission.³
7. While the OPA obtained approval for its business plan, the OPA has confirmed that it did not obtain the approval of the Minister to extend the usage fee to export customers.⁴
8. In addition, despite the significance and novelty of this issue, the OPA did not conduct any stakeholder consultations about this proposal extend fees to exporters.⁵ Indeed, the OPA made no effort to advise exporters or any other market participant about the proposal.⁶ The OPA also made no effort to consult with the IESO with regard to the impacts of extending its usage fee to exporters.⁷
9. When asked in an interrogatory about the lack of stakeholder consultation, the OPA responded to the interrogatory (filed February 11, 2011) that it “looks forward to engaging in further dialogue with intervenors regarding the proposal”.⁸
10. When questioned as to when the OPA expected this “further dialogue” would take place, the OPA’s witness confirmed that the OPA believed the oral hearing scheduled for the week of May 9, 2011 would provide the opportunity for stakeholders to participate.⁹ It is APPrO’s submission that an oral hearing is not the venue or time to conduct “stakeholder consultation”. An oral hearing does not mark the time to commence consideration of a fundamental change to a rate-setting methodology.
11. Moreover, the evidence of the OPA witness on this point directly contradicts the OPA’s position set out in its letter filed with the Board on April 6, 2011. There, the OPA argued that any hearing request pertaining to issues in the proceeding – including Issue #7.2 – should be denied.¹⁰ This discrepancy confirms that the OPA had no intention of engaging in any stakeholder consultation with regard to issue 7.2.
12. To put this in context, the OPA’s fees submission submitted in November of 2010 contained little more than two sentences indicating the intent of the OPA to

² S.O. 1998, c. 15, Sched. A.

³ Subsection 25.21(1) of the *Electricity Act*.

⁴ OPA interrogatory response to Consumer Council of Canada Interrogatory #9, lines 9-10.

⁵ OPA interrogatory response to APPrO Interrogatory #2, lines 7-8.

⁶ Oral testimony from OPA witness C. Farmer: Transcript, Volume 2 (May 10, 2011), p. 26, lines 7-8.

⁷ Oral testimony from OPA witness C. Farmer: Transcript, Volume 2 (May 10, 2011), p. 30, lines 14-19.

⁸ OPA interrogatory response to APPrO Interrogatory #2, lines 8-9.

⁹ Oral testimony from OPA witness C. Farmer: Transcript, Volume 2 (May 10, 2011), p. 26, lines 11-12 and p. 27, lines 12-13.

¹⁰ OPA correspondence to Board, filed April 6, 2011.

extend the OPA usage fee to exporters for the first time.¹¹ Prior to making the filing, the OPA did not advise the Minister or market participants (including exporters) of its intent to extend the usage fee (and that the reason for the proposed lower usage fee was not that the OPA had cut its revenue requirement but that it had found “new” customers to charge). So the OPA made no effort to consult on the matter or consider the impacts of its proposal on export levels, system integrity issues, surplus baseload generation, etc. Moreover, it is quite clear that the OPA never wanted to have a dialogue on these issues or seek to understand the impacts of its proposal.

13. As a result, there is virtually nothing on the record in this proceeding that supports in any principled way the proposal to extend the usage fee to exporters. Until the filing of its reply evidence, the OPA’s justification for its position was that the IESO charged exporters and the OPA asserted that exporters benefitted from the OPA’s activities. The reply evidence did little more than: (a) summarize a cursory search as to whether there are organizations similar to the OPA (and how such organizations might be funded); and (b) provide what amounts to argument as to why cost causality is not an appropriate rationale for extending the usage fee to export customers. The reply evidence did not assess the impacts of the OPA’s proposal, and in fact was fairly dismissive of the issue – Concentric simply stated that “the recovery of such a small portion of total market revenue does not justify a complex fee structure and allocation methodology”.¹² Neither the OPA nor Concentric made any effort to review whether the fees – which exporters consider material – to recover this “small portion” of revenue will make the difference between a successful and unsuccessful trade.

Consideration of Impacts

14. The OPA did not conduct or commission any studies of the impacts on the electricity markets of extending the OPA fee to exporters.¹³
15. The OPA did not assess whether its proposal would have any effect on, among other things, exporters in other jurisdictions, surplus baseload generation or the global adjustment.¹⁴ It also made no effort to assess whether extending its usage fee to exporters might actually result in a reduction of exports out of the province.¹⁵
16. As a point of comparison, Hydro One Network Inc.’s recent transmission rates case (EB-2010-0002) addressed the issue of increasing its Export Transmission Service (“ETS”) tariff charge from \$1/MWh. The ETS tariff is levied on

¹¹ OPA fees submission, Exhibit D-1-1, pp. 2-3.

¹² OPA reply evidence prepared by Concentric filed April 29, 2011, p. 10, lines 11-12.

¹³ OPA interrogatory response to APPrO Interrogatory #1, lines 7-8.

¹⁴ Oral testimony from OPA witness C. Farmer: Transcript, Volume 2 (May 10, 2011), p. 29, lines 9-18.

¹⁵ Oral testimony from OPA witness C. Farmer: Transcript, Volume 2 (May 10, 2011), p. 29, lines 19-23.

exporters based on the volume being exported – a situation analogous to the one we address here, where the OPA proposes to recover a volumetric usage fee from exporters.

17. What all parties were concerned about was whether raising the cost to export would dampen export volumes, and as a result leave the IESO with reduced flexibility to manage the power system – particularly in light of renewable energy integration issues and a recent trend towards increasing surplus baseload generation conditions in the province. In addition, any reduction in export volumes translates into less transmission revenues from exporters.
18. In that proceeding, the IESO undertook a study to ascertain the appropriate level of the ETS tariff. A working group (IESO Stakeholder Engagement SE-78) comprising of various electricity sector market participants was established to support the study and a stakeholder engagement process provided a “forum through which individuals or organizations with an interest in, or concern about the ETS tariff could provide the IESO with their input”.¹⁶
19. In preparing the study, the IESO performed an extensive analysis of various ETS tariff design options, which involved both quantitative and qualitative reviews and assessments of the impacts of raising the cost to export power. The comprehensive stakeholder consultations and analysis by the IESO (and its expert Charles River Associates) meant that the Board had a comprehensive body of evidence before it outlining the potential impacts of raising the cost to export electricity from Ontario. Here there is no such body of evidence, and in fact no evidence on the impacts of extending the OPA usage fee to exports.
20. In its ultimate decision, the Board raised the ETS tariff by \$1 per MWh after extensive consideration of the issue. In this fees submission, the OPA is asking the Board to increase the cost to export power increase by a further 52¢ per MWh with no consideration of impacts.
21. In carrying out its responsibilities under the *Ontario Energy Board Act, 1998*, the Board must be guided by the objective of protecting the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.¹⁷
22. In order for the Board to fulfill this statutory imperative and make an informed decision, APPrO contends that the OPA must commit to procuring a comprehensive study of the impacts – both from a costs perspective and on the electricity market generally – of extending its usage fee to exporters. Similar to the process followed in Hydro One’s transmission rates proceeding, the IESO and other stakeholders should be engaged.

¹⁶ Hydro One Networks Inc. 2011 Transmission Rates Application (EB-2010-0002), Exhibit H1, Tab 5, Schedule 2, p. 2, lines 22-23.

¹⁷ *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Sched. B, section 1(1)1.

OPA Activities

23. In its argument in chief, the OPA argues that if its proposal is approved by the Board, it “would bring the OPA’s practice for recovering its volumetric fee in line with the similar fee charged by the IESO”. The OPA also claims its proposal would “take account of the fact that export customers benefit from the planning, conservation and procurement activities of the OPA”.¹⁸
24. It is clear that exporters should pay the IESO fee. The IESO operates the physical assets which make exporting power possible, and exporters utilize the IESO’s services and are in continuous contact with the IESO – submitting bids/offers, securing transmission services, monitoring market dynamics, etc. Exporters (and others who pay the IESO fee) use the IESO’s services and cause the IESO to incur its costs.
25. By contrast, the OPA provides no services to exporters. It does, however, provide services to Ontario consumers. For example, the OPA designs and delivers extensive conservation programs across the provinces for Ontario consumers (some on its own, some in conjunction with other entities such as distributors).
26. Thus, while there is a basis for the IESO fee to be levied on exporters (i.e., exporters using IESO services and causing the IESO to incur costs to provide such services), there is no similar basis for the OPA usage fee to be levied on exporters. The OPA does not dispute this. Consequently, the OPA has had to come up with another basis to levy its fee on exporters – namely, the notion that cost causality is not a proper basis for levying the OPA fee but rather it should be levied on the basis of who potentially “benefits” from the OPA’s work.
27. The response to this is two-fold:
 - First, the Board’s jurisdiction in this matter is to approve (or not) the usage fee in the context of the Board’s statutory mandate. When it comes to setting rates and charges, the Board has typically employed the principle of cost causality. It is a fundamental principle of rate-making. It does not have to be the exclusive principle employed by the Board, but it should not be dismissed or ignored without some good reason. If a person uses the services of a rate-regulated entity and causes that entity to incur costs, that person will properly be levied the fee or rate for that service. As noted above, the OPA does provide services to Ontario consumers, but not to exporters. The OPA provides no evidence to explain why the most fundamental of rate-making principles should not apply to the OPA.
 - Second, even if the Board agreed with the OPA that cost causality should be completely disregarded when it comes to the OPA usage fee (and to rely

¹⁸ OPA argument in chief (May 17, 2011), p. 7, para 28.

wholly on the beneficiary pays principle), the fact is that the OPA provides no benefits to exporters. The OPA has simply made the bald claim that the benefits of its actions are “realized by all market participants”,¹⁹ without any real evidence on how its planning, conservation and procurement activities benefit exporters specifically.

28. Export markets are based on arbitrage and the difference in prices between markets. They are not affected by the activities of the OPA – as evidenced by the fact that robust inter-jurisdictional electricity trade, including export markets existed in Ontario long before the OPA came into existence.
29. The OPA’s rationale that all market participants benefit from its activities also does not explain, as an example, why the OPA suddenly proposes to recover its fee from exporters but not importers (if all users of the electricity system benefit from the OPA’s actions, why will only some participants be levied the fee)?
30. In seeking to justify that its activities benefit exporters, the OPA relies on evidence prepared by Concentric Energy Advisors, Inc. (“Concentric”), which asserts that the OPA is “a unique organization” with “no comparable organization that has a similar set of responsibilities for such a broad range of initiatives”.²⁰
31. In its evidence pertaining to fee recovery methods, Concentric researched entities that it claimed provide similar services to those provided by the OPA. Its review was restricted to NERC, the IESO and system operators in New England, New York, Alberta and New Brunswick.²¹ With the exception of the IESO, Concentric did not review the pertinent legal regimes or statutes governing these entities, but merely focused on their “broad functional responsibilities”.²² It is APPrO’s understanding that the other system operators charge exporters because they provide services to exporters, and that NERC’s O&M costs are based on load served and have nothing to do with exports.
32. Even though the main planning function in some neighbouring areas is carried out by the dominant utilities in those jurisdictions (e.g. Hydro Quebec), Concentric also neglected to review any utility models and their cost allocation methods.²³
33. No review of the rate-setting methodology for these entities in other jurisdictions was conducted. Rather, Concentric and the OPA simply make the claim that the breadth and complexity of the OPA’s responsibilities and initiatives “make a cost causality approach unrealistic”²⁴, and that the OPA’s activities are “not conducive

¹⁹ OPA argument in chief (May 17, 2011), p. 9, para 33.

²⁰ OPA argument in chief (May 17, 2011), p. 8, para 32.

²¹ Oral testimony from OPA witness J. Coyne: Transcript, Volume 2 (May 10, 2011), p. 5, lines 14-18.

²² Oral testimony from OPA witness J. Coyne: Transcript, Volume 2 (May 10, 2011), p. 6, lines 1-3.

²³ Oral testimony from OPA witness J. Coyne: Transcript, Volume 2 (May 10, 2011), p. 7, lines 9-10.

²⁴ OPA argument in chief (May 17, 2011), p. 8, para 32.

to a methodology that seeks to allocate costs on the basis of multiple ‘rate’ classes”.²⁵

34. When it comes to an explanation as to the benefits to exporters of the OPA’s main activities, the explanation from the OPA is similarly vague. What little explanation there is was provided only in response to APPrO Interrogatory #5.
35. The OPA carries out three main activities: (a) conservation; (b) procurement; and (c) planning.
36. In response to the APPrO Interrogatory #5, the OPA states that the OPA’s conservation function benefits exporters because conservation creates “sufficient capacity on the system to accommodate the needs of both domestic and export customers”. With respect, this is absurd. The OPA does not carry out its conservation activities (typically in response to the many conservation Directives from the Minister) to create capacity for exporters.
37. When asked to explain how the interests of exporters are taken into account in the OPA’s activities related to procurement, the OPA’s explanation is no explanation at all. The OPA merely states: “The OPA enters into procurement contracts for electricity supply that are available, and provide direct benefits, to both domestic and export customers.”
38. In response to the question of how the OPA’s planning function takes into account the interests of exporters, the OPA merely reverts to its standard explanation of broad benefits: “the development and maintenance of an Ontario electricity system that can reliably incorporate export volumes.” But this explanation does not hold up to any level of scrutiny. Clearly one of the main planning activities of the OPA is the IPSP. In the response to APPrO Interrogatory #3 (which requested an OPA response to an AMPCO interrogatory from a previous proceeding), the OPA acknowledges that the OPA did not incorporate any assumptions regarding imports/exports and wheeling in its transmission planning for the IPSP.²⁶ The OPA cannot point to one specific example of how its planning function even incorporates exports, let alone benefits export customers.
39. Consequently, APPrO submits that there is no legitimate basis (whether it be “fee for service”, “cost causality” or “beneficiary pays”) upon which to extend the fee to export volumes.

²⁵ OPA argument in chief (May 17, 2011), p. 9, para 33.

²⁶ OPA interrogatory response to AMPCO Interrogatory #51, lines 8-10 (EB-2007-0707). This response can be found at Attachment 1 of OPA interrogatory response to APPrO Interrogatory #3.

Conclusion

40. Based on these submissions, APPrO respectfully requests that the Board: (a) not approve the OPA's usage fee as currently proposed; and (b) refer the fees submission back to the OPA and recommend that the 2011 usage fee exclude export volumes (on the basis that there are no grounds for levying such fee on exports).
41. In the alternative, if the Board is of the view that there is a basis for levying a portion of the fee on export customers or the Board is uncertain as to whether the fee should be extended to export customers, then APPrO respectfully requests that the Board: (a) not approve the OPA's usage fee as currently proposed; and (b) refer the fees submission back to the OPA and recommend that the 2011 usage fee exclude export volumes; and (c) recommend that the OPA study the impacts of the proposal to extend the fee to exports (including adequate stakeholder consultation) prior to bringing forward a proposal to extend the fee to export volumes in a future fees submission.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,
ASSOCIATION OF POWER PRODUCERS OF
ONTARIO,
by its Counsel,**

"Signed"

**Ogilvy Renault LLP
per: John Beauchamp**