

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.

REPLY ARGUMENT OF THE ONTARIO POWER AUTHORITY

1. Introduction

1. The Ontario Power Authority (OPA) has received arguments from thirteen intervenors in this proceeding, as well as from Board staff. The arguments received by the OPA were filed by the following:

- (i) Association of Power Producers of Ontario (APPrO);
- (ii) Canadian Energy Efficiency Alliance (CEEA);
- (iii) Canadian Manufacturers & Exporters (CME);
- (iv) Consumers Council of Canada (CCC);
- (v) Energy Probe Research Foundation (Energy Probe);
- (vi) Green Energy Coalition (GEC);
- (vii) HQ Energy Marketing Inc. (HQEM);
- (viii) Low Income Energy Network (LIEN);
- (ix) Manitoba Hydro;
- (x) Ontario Sustainable Energy Association (OSEA);
- (xi) Pollution Probe;
- (xii) School Energy Coalition (SEC);
- (xiii) Vulnerable Energy Consumers Coalition (VECC); and
- (xiv) Board Staff.

2. The arguments referred to in paragraph 1 above comprise just under 200 pages of submissions, exclusive of numerous attachments, Schedules and Appendices. The arguments cover an extensive range of subjects and, in particular, they collectively propose that the Board's decision in this proceeding include requirements or conditions that touch on many aspects of how the OPA goes about its business. A list of requirements or conditions proposed in arguments in this proceeding is set out below.

LIST OF PROPOSED REQUIREMENTS OR CONDITIONS

- (i) Report on success in resolving outstanding connection issues in the Micro-FIT context (GEC);¹
- (ii) Report on the timeliness of operation of the FIT tests (GEC);²
- (iii) Provide quantified milestones for numbers of FIT and microFIT applicants and MWs connected (GEC);³
- (iv) Revise metrics to include comparisons of current period achievements to the specific related current period budgets, in addition to metrics that report on cumulative, persisting achievements (GEC);⁴
- (v) Update metrics to “reflect the new mandate” and report on progress toward the updated metrics in the next revenue review (GEC);⁵
- (vi) Research the potential, staff and resources to exceed the conservation targets where cost-effective and feasible (GEC);⁶
- (vii) Similarly, research the potential, staff and resources to honour the government policy of Ontario to be a North American leader in conservation (GEC);⁷
- (viii) Demonstrate a plan to exceed targets in a cost effective and timely manner (GEC);⁸
- (ix) In subsequent reviews, demonstrate that the OPA has undertaken studies and implemented procedures to maximize cost-effective conservation and optimize its portfolio and delivery approach (GEC);⁹
- (x) Evaluate the sufficiency of the OPA’s plans and budgets for subsequent filings in light of concerns that the OPA has under-budgeted for CDM planning and administration (GEC);¹⁰
- (xi) Disclose particulars of the pay for performance regime, ensuring rewards are tied to measureable outcomes (GEC);¹¹
- (xii) Re-draft the CDM incentive to base it on TRC or PAC (GEC);¹²
- (xiii) Ensure that the PAB budget is easily increased to accommodate needs of LDCs to exceed targets to achieve cost-effective and feasible conservation (GEC);¹³
- (xiv) Submit the CDM program to an annual audit (GEC);¹⁴
- (xv) Set milestones in accordance with CEEA’s criteria (CEEA);¹⁵
- (xvi) Provide clarity on determining the feasibility of cost effective savings for inclusion in load forecasts (CEEA);¹⁶
- (xvii) Publish the conservation potential studies done in 2006 with an itemized index (CEEA);¹⁷

¹ GEC Argument, page 7.

² GEC Argument, page 7.

³ GEC Argument, page 7.

⁴ GEC Argument, page 8.

⁵ GEC Argument, page 9.

⁶ GEC Argument, page 14.

⁷ GEC Argument, page 14.

⁸ GEC Argument, page 14.

⁹ GEC Argument, page 14.

¹⁰ GEC Argument, page 15.

¹¹ GEC Argument, page 15.

¹² GEC Argument, page 16.

¹³ GEC Argument, page 17.

¹⁴ GEC Argument, page 18.

¹⁵ CEEA Argument, page 11.

¹⁶ CEEA Argument, page 19.

¹⁷ CEEA Argument, page 20.

- (xviii) Provide complete numerical details on how the cost-effectiveness of potential programs is determined (CEEA);¹⁸
- (xix) Provide a step by step analysis demonstrating how conservation potential is assessed, how the cost-effective component of the potential is determined, and so on (CEEA);¹⁹
- (xx) Show how future forecast savings from codes, standards, OPA programs and LDC programs are developed and factored into load forecasts (CEEA);²⁰
- (xxi) Start the gas and electric collaboration in both program implementation and program design (CEEA);²¹
- (xxii) Develop and propose a verification and evaluation audit committee similar to that used by Enbridge and Union Gas (CEEA);²²
- (xxiii) Review potential overlap in OPA account executives and those of the gas companies and Hydro One (CEEA);²³
- (xxiv) Examine the case for hiring more lawyers in-house (CEEA);²⁴
- (xxv) Hire more analysts to assess customer bill impacts of planning and programs (CEEA);²⁵
- (xxvi) Report to the Board on steps taken to increase expertise and experience in the CDM division (CEEA);²⁶
- (xxvii) Provide independent expert opinion that the measures in the Master CDM Program Agreement are appropriate to ensure prudent use of ratepayer funds (CCC);²⁷
- (xxviii) Provide evidence in 2012 of how the measures in the Master CDM Program Agreement will be used to ensure prudent use of ratepayer funds (CCC);²⁸
- (xxix) Provide evidence in 2012 of the cost of using the measures in the Master CDM Program Agreement (CCC);²⁹
- (xxx) Follow the directions of Board in the Toronto Hydro-Electric System Limited (THESL) case regarding assessment of the duplication of programs (CCC);³⁰
- (xxxii) Determine and adopt more robust accounting measures that include a written budget process with codified roles and responsibilities (CME);³¹
- (xxxiii) Provide a description of zero-based budgeting and target-based budgeting processes (CME);³²
- (xxxiii) Provide a description of methods applied, on an initiative-by-initiative basis, to prepare and monitor internal and external budgets (CME);³³
- (xxxiv) Prepare and monitor budgets on an initiative-by-initiative basis (CME);³⁴

¹⁸ CEEA Argument, page 20.

¹⁹ CEEA Argument, page 20.

²⁰ CEEA Argument, page 20.

²¹ CEEA Argument, page 32.

²² CEEA Argument, page 35.

²³ CEEA Argument, page 39.

²⁴ CEEA Argument, page 39.

²⁵ CEEA Argument, page 39.

²⁶ CEEA Argument, page 39.

²⁷ CCC Argument, page 16.

²⁸ CCC Argument, page 16.

²⁹ CCC Argument, page 16.

³⁰ CCC Argument, page 16.

³¹ CME Argument, page 6.

³² CME Argument, page 6.

³³ CME Argument, page 6.

- (xxxv) Prepare and publicly disclose economic feasibility assessments (CME);³⁵
- (xxxvi) Remove the provisions in the OPA's current arrangements with LDCs that provide room for Board-Approved programs (CME);³⁶
- (xxxvii) Remove the cost efficiency incentive in the current arrangements between the OPA and Ontario LDCs (CME);³⁷
- (xxxviii) Include organizations that represent low-income consumers, residential consumers, First Nations and Métis, and conservation proponents on the Consumer Advisory Council (LIEN);³⁸
- (xxxix) Include organizations that represent low-income consumers, residential consumers, First Nations and Métis, and conservation proponents on the proposed stakeholder advisory group (LIEN);³⁹
- (xl) Subject to confidentiality concerns, make the materials and information available on iCon, the LDC webinars and the capability building initiatives relating to CDM programs accessible to the public (LIEN);⁴⁰
- (xli) Track FTEs on a program and initiative level (LIEN);⁴¹
- (xlii) Apply the FIT registration fees as an offset to the FIT management budget (OSEA);⁴²
- (xliii) Develop a more comprehensive and transparent management and reporting system for the FIT program (OSEA);⁴³
- (xliv) Manage all procurements in a fair and equitable manner, with transparency as to implementation, monitoring, registration fees and timing of resources allocations (OSEA);⁴⁴
- (xlv) Develop and publicly disclose an audit policy which sets out the specific criteria for selection of auditors, and criteria for which programs are subject to these external value-for-money audits (SEC);⁴⁵
- (xlvi) Actively engage stakeholders in the process of selecting auditors (SEC);⁴⁶
- (xlvii) Post all final audit reports online immediately after being presented to senior management (SEC);⁴⁷
- (xlviii) Report back in the next revenue requirement submission with a proposal to track the financial and staffing resources allocated to implement each Ministerial Directive (SEC);⁴⁸
- (xlix) Update the Board and report on the OPA's website with regard to progress in implementing each Ministerial Directive (SEC);⁴⁹
- (l) File an annual report detailing progress towards the Minister's Directive dated April 23, 2010 (SEC);⁵⁰
- (li) Clarify uncertainty about the ECT being conducted in this fiscal year (Board Staff);⁵¹ and

³⁴ CME Argument, page 22.

³⁵ CME Argument, page 22.

³⁶ CME Argument, page 23.

³⁷ CME Argument, page 23.

³⁸ LIEN Argument, page 4.

³⁹ LIEN Argument, page 6.

⁴⁰ LIEN Argument, page 9.

⁴¹ LIEN Argument, page 9.

⁴² OSEA Argument, page 3.

⁴³ OSEA Argument, page 3.

⁴⁴ OSEA Argument, page 4.

⁴⁵ SEC Argument, page 10.

⁴⁶ SEC Argument, page 11.

⁴⁷ SEC Argument, page 11.

⁴⁸ SEC Argument, page 12.

⁴⁹ SEC Argument, page 12.

⁵⁰ SEC Argument, page 13.

⁵¹ Board Staff Submission, pages 6-7.

- (iii) Develop a communication system to inform stakeholders when new documents have been posted to the OPA's website (Board Staff);⁵²

3. Obviously, the OPA cannot respond in a full and detailed way to almost 200 pages of argument, and 52 proposed requirements or conditions while, at the same time, keeping the length of its reply argument within reasonable bounds. Under the headings that follow, the OPA will endeavour to respond to the points that appear to emerge as major themes from the arguments of intervenors and Board Staff. It should not be assumed that the OPA accepts or agrees with any points made in intervenor arguments that the OPA does not address in this reply argument.

2. Scope of the Revenue Requirement Proceeding

4. With respect to the scope of the revenue requirement proceeding, GEC says that, if the review of the OPA's Business Plan by the Minister of Energy "were determinative", then "the Board's review would be irrelevant".⁵³ At no time has the OPA suggested that the Minister's approval of the OPA's Business Plan is determinative of the Board's review of the OPA's expenditure and revenue requirements and proposed fees.

5. As set out in argument in chief, the Minister and the Board exercise generally co-extensive powers under the *Electricity Act, 1998* (the Act)⁵⁴ in filling two different roles. The Minister's role is to approve the Business Plan or send it back to the OPA for further consideration.⁵⁵ As part of the approval of the Business Plan, the Minister approves the OPA's proposed activities and the milestones set by the OPA for those activities. After the Business Plan (including activities, milestones and other elements) has been approved by the Minister, the Board is empowered to review the expenditure and review requirements and proposed fees of the OPA.⁵⁶

6. The Act does not in any way provide for or contemplate that the Minister's approval of activities and milestones in the Business Plan could be overturned by the Board. This certainly does not mean, however, that the Board's review is "irrelevant". The Board's review is relevant to determine whether the OPA's expenditure and revenue requirements and fees are appropriate for fulfillment of the Business Plan approved by the Minister.

7. Parties to this proceeding have asked the Board to go far beyond the intended scope of the case which is, again, a review of the expenditure and revenue requirements and fees to determine whether they are appropriate for fulfillment of the Business Plan. The submissions that have been made to the Board assume that the

⁵² Board Staff Submission, page 7.

⁵³ GEC Argument, page 5.

⁵⁴ S.O. 1998, c. 15, Sched. A.

⁵⁵ The Act, section 25.22.

⁵⁶ The Act, section 25.21.

role of the Board is to direct essentially all aspects of the OPA's activities. This can be seen plainly from the List of Proposed Requirements or Conditions set out above.

8. The notion that it is the Board's role to direct the activities of the OPA can be seen also in the evidence provided by Mr. Neme on behalf of GEC. The Board has, of course, issued an order authorizing the OPA to recover a usage fee in 2011 on an interim basis.⁵⁷ Mr. Neme recommended that the Board "should put in place an interim order authorizing the OPA to pursue CDM activities consistent with its current plan".⁵⁸ The assumption underlying Mr. Neme's evidence is that the OPA's authority to pursue its activities must be provided by the Board.

9. CCC says that "it is unclear why the OPA would choose to devote virtually its entire [argument in chief] to submissions on the Board's jurisdiction and the scope of the Board's enquiry".⁵⁹ CCC also says that it is "regrettable" that "the OPA has taken what amounts to an extreme view of the limits of the Board's jurisdiction".⁶⁰

10. As for CCC's comment about an "extreme view", the OPA's argument in chief focused on the provisions of the governing legislation that establish the respective roles of the Minister and the Board. There is nothing "extreme" about starting from the applicable legislative provisions in determining the proper scope of a proceeding. In contrast with CCC's comment that the OPA has taken an extreme view, SEC in its argument fairly and openly recognized that the role of the Board in its review of a revenue requirement submission is limited.⁶¹

11. The reason why the OPA took care to address the scope of this proceeding in argument in chief is because it became apparent during the course of the hearing that there was cause to be concerned that some parties view the revenue requirement proceeding as an opportunity for them to tell the Board how the OPA should carry out its activities. This concern has been borne out by the submissions that have been filed in this proceeding. As revealed by the List of Proposed Requirements or Conditions, parties have strayed from a review of the OPA's expenditure and revenue requirements and proposed fees into a wide range of requirements and conditions that would direct how the OPA carries out its activities.

12. Not only does the List of Proposed Requirements of Conditions reveal the extent to which the submissions of parties have strayed outside the statutory framework for this proceeding, the list also makes clear that it is not a workable or manageable proposition for the revenue requirement proceeding to become a means for parties to tell the Board how the OPA should carry out its activities.

⁵⁷ Issues Day Decision and Procedural Order No. 2, page 8.

⁵⁸ Exhibit L1.2, page 10, para. 2.

⁵⁹ CCC Argument, pages 2-3, para. 7.

⁶⁰ CCC Argument, page 6, para. 24.

⁶¹ See SEC argument at pages 3 to 6.

13. In order to give effect to the 52 proposals that have been made by intervenors in this proceeding, the Board would have to direct the activities of the OPA in a manner that would effectively re-write the Business Plan, even though the Minister-approved Business Plan is a statutory prerequisite for the revenue requirement submission. Indeed, to use GEC's word, the Minister's approval of the Business Plan would be "irrelevant" if, after such approval, the Board were to give directions such as the 52 proposals set out in the List of Proposed Requirements and Conditions. This cannot possibly have been the intention of the Act.

3. Stakeholder Engagement and Transparency

14. A number of intervenors have made submissions about stakeholder engagement by the OPA and about "transparency". None of these intervenors have addressed the evidence regarding the efforts of the OPA to engage stakeholders and to achieve an appropriate level of transparency. The evidence in this regard includes the following:

~ during the period from January 1 to September 30, 2010, the OPA held 41 stakeholder events, involving approximately 7,000 participants;⁶²

~ the OPA launched a new website in mid-November 2010 that more clearly conveys the strategic objectives of the OPA, conveys information to stakeholders and ratepayers and tells the story behind the transformation of Ontario's energy sector;⁶³

~ the OPA will continue to refine this website by adding new features and ensuring that it is easily accessible to ratepayers and stakeholders⁶⁴ – in January of 2011, a new section of the conservation site was launched to ensure uniform province-wide communications and delivery of conservation programs through local distribution companies;⁶⁵

~ as of the date of the pre-filed evidence in this case, nearly 50 speeches had been given by the OPA executive team and all presentations – many with video – had been posted on the website;⁶⁶

⁶² Exhibit B-5-1, page 9.

⁶³ Exhibit B-5-1, page 6.

⁶⁴ Exhibit B-5-1, page 6.

⁶⁵ Exhibit B-5-1, page 5.

⁶⁶ Exhibit B-5-1, page 8.

~ in 2010, over 133,000 Ontarians took the Power Pledge, which was a seven-fold increase in pledges over 2009, and the Power Pledge has generated a database of over 70,000 Ontarians who opted-in to receive ongoing information about energy conservation,⁶⁷ and

~ other stakeholder outreach sessions included two OPA management teleconferences and a session for the Industrial Accelerator Program.⁶⁸

15. On the subject of “transparency”, CEEA submits (twice) that the OPA stated in pre-filed evidence that a planning outlook had been provided to stakeholders, while an OPA witness admitted on cross-examination that the document was not provided to stakeholders.⁶⁹ In fact, the OPA’s evidence did not state that this document had been provided to stakeholders. The evidence is that one of the OPA’s 2010 milestones was to provide a planning outlook to stakeholders. The evidence indicates that the planning outlook was developed, but the evidence does not say that the planning outlook was given to stakeholders.⁷⁰ It is clear from the evidence, though, that the OPA was successful in achieving virtually all of its other milestones for 2010.⁷¹

16. Board Staff submits that the OPA should develop a communication system, possibly similar to the Board’s “What’s New” service and, in this context, refers to directives from the Minister.⁷² Currently, the OPA’s website includes a feature of this nature that provides updated information in relation to the IPSP, conservation, the FIT program and requests for proposals. The OPA accepts Board Staff’s submission regarding Minister’s directives and is working to extend the existing service to include directives.

17. The OPA website also includes information about stakeholder teleconferences and webcasts and it currently provides the schedule for four (quarterly) management teleconferences and webcasts in 2011 (March 4, June 3, September 9 and December 2).⁷³ Among the statements about communications with stakeholders that appear on this page of the website are the following:

Communication and consultation with Ontario’s electricity stakeholders is a major priority at the OPA. ... **Interested**

⁶⁷ Exhibit B-5-1, page 5.

⁶⁸ Exhibit B-5-1, page 10.

⁶⁹ CEEA Argument, pages 19 and 29.

⁷⁰ Exhibit B-1-1, page 9.

⁷¹ Exhibit B-1-1, pages 8-10; Exhibit B-2-1, pages 16-20; Exhibit B-3-1, pages 14-18; Exhibit B-4-1, pages 18-20; and Exhibit B-5-1, pages 8-10.

⁷² Board Staff Submission, page 7.

⁷³ <http://www.powerauthority.on.ca/webinars-and-teleconferences/opa-stakeholder-teleconferences-and-webcasts>

stakeholders are invited to ask questions on any aspect of the various responsibilities of the OPA.

(Emphasis added.)

18. There is no evidence in this case of any instance where a stakeholder has taken up this invitation to ask questions on an aspect of the OPA's responsibilities and has received an unsatisfactory response. The evidence in this case is that the OPA receives generally favourable assessments among stakeholders with regard to communication effectiveness and that stakeholders are decidedly positive in assessing the job that the OPA does communicating with them compared to their experiences with other similar organizations.⁷⁴

19. While the OPA believes that its webcasts, teleconferences and other stakeholder engagement sessions provide an opportunity for stakeholders to bring forward their views and questions to the OPA, the issues raised by a number of intervenors in this proceeding suggest that the OPA should continue to improve its communications with stakeholders. The OPA will strive to enhance further the effectiveness of its communications with stakeholders.

20. As discussed by Ms McNally in her testimony, the OPA has decided to establish a stakeholder advisory group. Ms McNally's evidence in this regard was as follows:

.... And as I've mentioned a few times, we are in the process of designing the creation of a stakeholder advisory group that we hope to get going this year. So our day-to-day business continues and is not put on hold or chilled by the IPSP.

MR. POCH: I'm sorry, you said you are going to have a stakeholder advisory group. Is that going to be like -- include intervenors? Is it going to be a funded process where people could comment on proposed evaluations, scopes of evaluations? Have I missed that?

MS. McNALLY: So we haven't -- no, I've only talked at the highest level about it. We have not nailed down the details yet, but certainly the thinking is that it would include customers, supply chain, delivery agents, OEB stakeholders, other experts. And it would be providing us advice on, particularly on programs, policy activities, research. I don't imagine that that group will get into the nitty-gritty of evaluations, but that group may want to comment on the evaluation protocols.⁷⁵

⁷⁴ Exhibit B-5-1, page 9.

⁷⁵ Transcript, Volume 3, page 72.

21. LIEN argues that the Board should place conditions on its approval of the revenue requirement submission requiring certain organizations to be represented on the stakeholder advisory group mentioned by Ms McNally and also on the OPA's Consumer Advisory Council.⁷⁶ The OPA submits that this proposal does not fall within the scope of the Board's review of the 2011 revenue requirement submission, but, in any event, the OPA urges the Board not to impose requirements with respect to representation on advisory groups when the evidentiary record lacks any basis for the Board to reach an informed decision about the appropriate composition of such groups.

22. As stated in the Business Plan, the OPA is undertaking a review of its stakeholder groups in 2011.⁷⁷ It is premature to decide the composition of stakeholder groups before this review has been completed. With respect to the stakeholder advisory group, for example, it is clear from the evidence of Ms McNally that the OPA itself had not, at the time of her evidence, worked out the details of the role to be played by this group. The OPA welcomes suggestions from stakeholders (which can be provided to Ms McNally) about the process for establishing the stakeholder advisory group.

23. In addition to the establishment of the stakeholder advisory group, the OPA will hold a session prior to the filing of its next revenue requirement submission, during which intervenors in this proceeding will be able to discuss their views and questions with the OPA. The OPA expects that the timing of this session is likely to be during August of 2011.

4. Metrics and Milestones

24. The submissions of a number of intervenors address the OPA's metrics and milestones. GEC says that the milestones are activity-based rather than outcome-based,⁷⁸ while CCC says that the milestones are results-based and not activity-based.⁷⁹ GEC argues that "[v]ague milestones defeat accountability" and that "minimum achievement goals ... should be explicit in the milestones and should be quantified where possible."⁸⁰

25. The OPA readily acknowledges that it needs to provide information to assist the Board in reviewing the expenditure and revenue requirements and fees that are proposed to fulfill the Business Plan approved by the Minister. The milestones may well be considered by the Board for this purpose, namely, to assist the Board in its review of whether the OPA's expenditure and revenue requirements and fees are appropriate. Thus, consideration of the OPA's progress in meeting milestones during one fiscal year

⁷⁶ LIEN Argument, pages 4 and 6.

⁷⁷ Exhibit A-2-1, page 40.

⁷⁸ GEC Argument, page 7.

⁷⁹ CCC Argument, page 11, para 45.

⁸⁰ GEC Argument, pages 7-8.

might assist the Board in its review of the expenditure and revenue requirements for the next fiscal year. The Board might conclude, for example, that the OPA's progress towards its milestones in the earlier fiscal year is relevant to the OPA's allocation of its operating resources in the fiscal year covered by a revenue requirement submission.

26. This does not mean, however, that the revenue requirement proceeding can or should become a forum for parties to seek changes to, or second-guess, the activities and milestones that have been approved by the Minister. Except to the extent that consideration of progress towards milestones is relevant to the Board's review of expenditure and revenue requirements and fees, it does not mean that the revenue requirement proceeding is a forum for parties to seek to hold the OPA "accountable" for implementation of the Business Plan approved by the Minister or of directives issued by the Minister.

27. The OPA also acknowledges that meaningful metrics are one type of information that would assist the Board in its review of the expenditure and revenue requirements. The difficulty lies in the unique mandate of the OPA and the changes that occur to the mandate as directives are issued to the OPA through the course of any particular year. The same factors that make the Board's review of the OPA's expenditure and revenue requirements unlike any other Board proceeding also contribute to the difficulty of framing metrics that are meaningful for the purposes of the revenue requirement proceeding.

28. As the Board is aware, the OPA has made efforts to develop metrics to assist the Board with its review of expenditure and revenue requirements. It has been made clear by intervenors that they do not believe that the current metrics are adequate for the purposes of the Board's review. Because the development of meaningful metrics for the OPA's work is a complex exercise, the OPA proposes to consult with intervenors on the subject of metrics or other methods of assessing the OPA's budget that may be of value in future revenue requirement proceedings. The OPA's plan is that this consultation will occur in conjunction with the intervenor session referred to above that is expected to be scheduled during August of 2011.

29. SEC submits, with respect to milestones, that the OPA should report on the extent to which each milestone has been achieved, including an explanation for each failure to do so and proposals, if any, to amend a milestone or change the OPA's approach in order to achieve the milestone.⁸¹ The OPA has attempted to include thorough reporting on progress towards its milestones in its revenue requirement submissions. The pre-filed evidence in this case contains detailed explanations of the OPA's success in meeting the 2010 milestones for each of the five Strategic Objectives.⁸² In light of the comments made in this case, the OPA will seek to provide

⁸¹ SEC Argument, page 9.

⁸² Exhibit B-1-1, pages 8-10; Exhibit B-2-1, pages 16-20; Exhibit B-3-1, pages 14-18; Exhibit B-4-1, pages 18-20; and Exhibit B-5-1, pages 8-10.

even greater clarity about progress towards milestones in its next revenue requirement submission.

5. Budgeting by Initiative

30. In its argument, CEEA says that the OPA “chose” not to submit its “O&M budget and FTE requirements” on an initiative basis and that, despite the Board’s suggestion in the Issues Decision, “the OPA did not see fit to amend its application to break down its FTE and dollar requirements by initiative”.⁸³ Contrary to these assertions by CEEA, the issue about filing of costs on an initiative basis does not arise because of what the OPA “chose” or “saw fit” to do. The reason why the OPA has not filed evidence breaking down its internal costs by initiative is because the OPA does not have the capability to do so.

31. After this issue was addressed in the Board’s Issues Decision, the OPA stated clearly the action that it will take in response to the comments of the Board. Specifically, the OPA stated in its response to Board Staff Interrogatory 1 that:

...the OPA will endeavour to develop a capability to allocate internal staff costs for the purposes of its next revenue requirement submission, taking into account the cost and dedicated staff resources required to implement such an initiative.⁸⁴

32. The response to Board Staff Interrogatory 1 also explained why the OPA does not currently have a capability to budget or allocate costs on an initiative basis. The explanation provided in the interrogatory response is as follows:

As reflected in the Board’s Issues Decision, the OPA does not currently track, allocate or budget internal staff costs on a project-by-project basis. The OPA has not considered this to be a useful exercise in the past, as the OPA’s administrative activities are driven by government directives and policies, and so the OPA’s priorities and activities are potentially subject to significant change between budget cycles. Further, OPA staff are not assigned exclusively to one project, but move fluidly between multiple projects and across multiple divisions.⁸⁵

33. In its argument, CME submits that the Board should require “more robust accounting measures” by the OPA and it sets out in some detail the requirements that it

⁸³ CEEA Argument, page 36.

⁸⁴ Ex. I-1-1, page 2.

⁸⁵ Ex. I-1-1, page 1.

believes should be imposed on the OPA.⁸⁶ There is, in fact, no evidence in this case to support the proposition that the Board should impose “more robust accounting measures” on the OPA. The issue that emerged from cross-examination of the OPA witnesses at the hearing is the same issue that was addressed in the response to Board Staff Interrogatory 1. During cross-examination by counsel for CME, for example, Mr. Gabriele was asked about development of the OPA’s budget on an initiative basis. The response by Mr. Gabriele was as follows:

I believe in the evidence filed we did mention that we utilize OPA internal resources on a pooled basis and a cross -- a cross-functional basis. So we don't devise them on an individual initiative basis in a specific division.⁸⁷

34. This issue was pursued further on cross-examination by counsel for CEAA, which gave rise to the following exchange between Mr. Sommerville and Mr. Gabriele:

MR. SOMMERVILLE: I think maybe I could do it. What Mr. Brett, I think, is looking for is if it is possible for you to provide, on an FTE basis, a breakdown as per initiative, so with respect to the initiatives that are listed in the evidence, the FTEs that are associated with that initiative, if that information is -- if you have that information.

MR. BRETT: Thank you.

MR. GABRIELE: So for the 2011 evidence, we have not compiled the information in that fashion. So the FTEs are not strictly limited to one specific initiative over the year. They work cross-functional -- in cross-functional tasks, and we haven't developed our evidence with the amount of time for each individual on a cross-functional task.

So we have done it by strategic objective and the initiatives under those strategic objectives provide a fairly reasonable level of clarity on that.⁸⁸

35. Despite the OPA’s response to Board Staff Interrogatory 1, the issue about budgeting on an initiative basis continues as a theme in the submissions of some intervenors. CEAA goes so far as to say that it is “somewhat unusual” that OPA employees do not complete dockets reflecting the time that they spend on different activities. In this regard, CEAA refers to professional and consulting businesses, like accounting firms and law firms, that, CEAA says, “have quantitative data, even if only approximate, on what projects their employees spend their time on”.⁸⁹

⁸⁶ CME Argument, page 6.

⁸⁷ Transcript, Vol. 1, page 16.

⁸⁸ Transcript, Vol. 1, page 104.

⁸⁹ CEAA Argument, page 36.

36. Professional and consulting firms render invoices to their clients for work performed on behalf of the clients and, in this context, time records may be very important. Indeed, time records are essential for firms that bill their clients on an hourly basis. The OPA does not render invoices for work performed on behalf of clients and no example has been provided of an organization similar to the OPA that has in place a system for recording and allocating employees' time. There is no evidentiary support for CEAA's assertion that it is "somewhat unusual" for OPA employees not to complete time dockets.

37. Moreover, CEAA's argument blurs together its propositions about the recording of actual time spent on particular activities with the issue about budgeting of costs for an upcoming forecast period. The budgeting of costs on an initiative basis is a problem for the OPA not only because employees move fluidly between projects, but also because the OPA's priorities and activities are potentially subject to significant change between budget cycles. The recording of employee time actually spent on specific activities in one fiscal year does not resolve the problem of budgeting costs for the next fiscal year because of the significant changes in the OPA's priorities and activities that can occur between budget cycles.

38. The OPA reiterates the statement made in the response to Board Staff Interrogatory 1 that it will endeavour to develop a capability to allocate internal staff costs for the purposes of its next revenue requirement submission, taking into account the cost and dedicated staff resources required to implement such an initiative. The OPA submits that no remaining issue of substance has been raised in intervenor submissions regarding the budgeting of costs by initiative.

39. SEC submits that the OPA should post all final audit reports online immediately after being presented to senior management.^[1] The OPA makes public its financial audit in its annual report.^[2] The OPA is also subject to a publicly-available audit by the Auditor General of Ontario. The OPA submits that any proposal for posting of internal audit reports should be rejected, because internal audit reports typically are not prepared for the purpose contemplated by SEC and the OPA is not aware of other organizations that post internal audit reports in this fashion.

6. Minister's Directives

40. SEC says that the Board should require the OPA to report back in its next application with a proposal to track resources allocated to implement each Ministerial directive.⁹⁰ As well, SEC says that the OPA should update the Board on its progress in

^[1] SEC Argument, page 11.

^[2] Exhibit A-3-1.

⁹⁰ SEC Argument, page 12.

implementing each directive and make this information available on its website and, in future submissions, provide an analysis of how it plans to meet each directive.⁹¹

41. The OPA provided in its argument in chief a 2008-2011 Directives Table in order to make clear that the OPA cannot include a plan for meeting Minister's directives with a revenue requirement submission, because it is consistently the case that a large number of important directives are issued after the revenue requirement filing has been made. Without exception, intervenors have made no effort to address the 2008-2011 Directives Table, or to explain how the OPA can plan for, or track, compliance with directives in a filing that precedes the issuance of many directives.

42. The OPA submits that it is not a worth-while use of its resources to attempt to frame its revenue requirement submission by reference to plans and tracking proposals for compliance with directives, when the likelihood is extremely high that these plans will have to change as soon as additional directives are issued.

43. This is one of the reasons why the OPA emphasized in its argument in chief that, in accordance with the provisions of the governing legislation, the focus of the revenue requirement proceeding should be the expenditure and revenue requirements and fees that are appropriate for the fulfillment of the Minister-approved Business Plan. Pursuant to the provisions of the governing legislation, the Minister-approved Business Plan is known at the time of the OPA's revenue requirement filing and is a prerequisite for the Board's review under section 25.21. In contrast, the full complement of Minister's directives that will be issued in respect of any particular year covered by a revenue requirement filing is not known at the time of the filing of the revenue requirement submission.

7. Verification of Conservation Savings

44. Some intervenors have offered their views to the Board about what the OPA should do to verify conservation savings. No party has explained how these views are a matter for the Board to consider in its review of whether the OPA's 2011 expenditure and revenue requirements and proposed fees are appropriate.

45. Giving effect to the views expressed by these intervenors would add costs and complexity to a process that, according to the OPA's evidence, is already rigorous and effective. Ms McNally's testimony in this regard was as follows:

MS. McNALLY: Yes, so it's certainly the OPA's position that we have in place an effective and rigorous EM&V process, and that it's unnecessary to add on extra and cumbersome layers of process to the existing process.

⁹¹ SEC Argument, page 12.

Again, as mentioned, I think, in opening, we have a process that uses independent third-party expert evaluators. They are doing their work according to publicly available protocols which are updated from time to time, and certainly we are open to feedback on those protocols.

We will be introducing a new expert panel to address the increased and new complexity brought in by the LDC province-wide programs and Board-approved programs. So we believe we have a rigorous process in place that's been confirmed, certainly, by the -- in the ECO's opinion.

We believe that the electricity side is quite different from natural gas, and so that what is good for the natural-gas goose isn't necessarily good for the gander.

I mean, of course, the key differences are, natural-gas side, those are two for-profit companies, whereas the OPA is a public organization with a public social mandate and a board of directors, publicly appointed board of directors, supervising our work.

So we think the two -- the two sides are quite different, and thus it's perfectly appropriate to have two different procedures. And then in our case we believe we have a rigorous, effective procedure in place.⁹²

46. Ms McNally's reference in this testimony to the Environmental Commissioner of Ontario (ECO) picked up on evidence that she had given earlier regarding the ECO's view of the rigour of the OPA's EM&V process. The following is her earlier exchange with counsel for GEC on this subject:

MR. POCH: Okay. And in discussing, generally, transparency and accountability, we need to be cognizant of the role of the IESO, and I'm anticipating that -- I invited the commissioner to comment, and just to be perfectly transparent, I've included my letter to him at page 24 of our materials, and then his response at page 25.

And there he confirms, in the third paragraph, that he does not participate in the selection, retention, and supervision of the parties that conduct your EM&V studies.

Does that response reflect your understanding of the situation?

MS. McNALLY: Yes, the ECO does not have the mandate. We have the mandate do the evaluations, and again, of course we do them according to publicly available protocols.

⁹² Transcript, Volume 3, pages 69-70.

But while we're talking about the ECO, the recent ECO report was filed into evidence, I believe, by one of the parties, the 2009 report, where the ECO does comment upon, with praise:

"The ECO is generally impressed..."

And here I'm reading at page 9 of the 2009 Volume 2 report:

"The ECO is generally impressed with the level of rigour that has gone into the OPA evaluations."

MR. POCH: Right.

MS. McNALLY: So it's --

MR. POCH: And, sorry, did you want to go on?

MS. McNALLY: I was going to say, so, yes, they're not responsible, but certainly they have praised us for our rigorous evaluations.⁹³

47. The OPA submits that the analogy that GEC has attempted to draw between verification of conservation savings resulting from OPA programs and the evaluation of Demand Side Management (DSM) by gas utilities is inapt. The Board exercises jurisdiction over the DSM programs of gas utilities, including approval of overall DSM spending. The OPA's spending on conservation programs is within the "charges" that are not part of the OPA's revenue requirement proceeding. The evaluation process established in respect of DSM by gas utilities was an outflow of the jurisdiction that the Board exercises over the DSM programs, but there is no parallel jurisdiction in respect of the OPA's conservation program spending.

8. Master CDM Program Agreement

48. CCC and CME make similar submissions about the Master CDM Program Agreement, even to the point of each citing the same decision of the Ontario Court of Appeal regarding the meaning of the term "reasonable commercial efforts".⁹⁴ These and other parties such as Pollution Probe apparently believe that the Board's review of the OPA's 2011 revenue requirement submission is a forum for legal analysis of a contract negotiated by the OPA and the electricity distributors pursuant to a directive issued by the Minister. The OPA submits that the arguments of these parties about the Master CDM Program Agreement fall far outside the scope of the Board's review of the OPA's 2011 expenditure and revenue requirements and proposed fees.

49. Suffice it to say that the OPA does not agree with the legal analysis of the Master CDM Program Agreement that has been put forward by parties and it does not agree

⁹³ Transcript, Volume 3, pages 67-8.

⁹⁴ CME Argument, page 17 and CCC Argument, page 10, para. 41.

that the Court cases put forward by CCC and CME are helpful in that regard.⁹⁵ Further, it may be observed that, although CME asserts that the Board should refrain from approving the revenue requirement submission without a commitment from the OPA that it will remove incentive provisions from the master agreement, CME does not elaborate on the means by which it expects the OPA unilaterally to remove provisions from a contract agreed upon with the LDCs.

50. CCC submits that the 2011 revenue requirement submission should be approved, but with directions that the OPA should provide evidence and an independent expert opinion in its 2012 submission regarding “measures” in the Master CDM Program Agreement that will ensure the prudent use of ratepayer funds.⁹⁶ Program spending under the Master CDM Program Agreement falls within the “charges” that, pursuant to the Act, are not subject to the approval of the Board in a revenue requirement proceeding. Further, CCC’s submission about “measures” in the Master CDM Program Agreement is essentially an argument about the provisions of a contract entered into by the OPA. In support of the 2012 revenue requirement submission, the OPA will provide evidence of its budgeted costs to advance its Strategic Objectives, including conservation. It is this evidence that bears on the Board’s consideration of the OPA’s revenue and expenditure requirements, not evidence and debate about the provisions of contracts entered into by the OPA.

51. Pollution Probe contends that the Cost Efficiency Incentive⁹⁷ provided for in the Master CDM Program Agreement (which it calls an “under spending incentive”) “may” act at cross-purposes to the Board’s incentives “in certain circumstances”.⁹⁸ Despite this very cautious suggestion that there may be circumstances in which the incentives could be at cross-purposes, Pollution Probe moves on to relatively much stronger conclusions about the incentives. Others go even further. In contrast to Pollution Probe’s assertions that the incentives “may” act at cross-purposes “in certain circumstances”, GEC says that “the current incentive is extremely dangerous and should be eliminated immediately”. CEEA says that the incentive “has been demonstrated to be perverse”.⁹⁹

52. Pollution Probe argues that the Cost Efficiency Incentive can provide the electric utilities with a “profit bonus” for failing to achieve their Board-mandated minimum conservation targets.¹⁰⁰ In fact, the electricity distributors are required to meet the targets as a condition of their licences and stopping short of meeting targets to take the benefit of an incentive is not an option for them. The Master CDM Program Agreement

⁹⁵ Among other things, it may be noted that, as acknowledged by CME, the term “commercially reasonable efforts” is a defined term in the Master CDM Program Agreement, while, in the cases relied upon by CME, no similar definition was given to the term under consideration (“reasonable commercial efforts”).

⁹⁶ CCC Argument, page 16.

⁹⁷ Exhibit I-2-4, Attachment 1, pages 24-5.

⁹⁸ Pollution Probe Argument, page 1.

⁹⁹ CEEA, page 15.

¹⁰⁰ Pollution Probe Argument, page 1.

requires each party to the agreement to maintain its licence in good standing, to the extent necessary or appropriate to carry out its obligations under the agreement, and to comply with all laws and regulations required to be complied with in the performance of obligations under the agreement.¹⁰¹

53. During cross-examination, Ms McNally explained at length how the provisions of the Master CDM Program Agreement enable the OPA to ensure that the Cost Efficiency Incentive does not produce the result of concern to Pollution Probe. Her evidence in this regard included the following:

So I guess, again, taking a step back, the incentive only gets paid out if the LDCs are taking commercially reasonable efforts to achieve their targets, and the contract includes a provision for monitoring achievement of targets and spend and a remediation plan, so that we have a provision both to monitor, but also to take steps to ensure the LDCs are on track.¹⁰²

9. Meeting Targets for Electricity Distributors

54. A number of intervenors also apparently believe that the Board's review of the revenue requirement submission is a forum for debate about the extent to which the OPA-Contracted Province-Wide CDM Programs will enable electricity distributors to meet their targets. CME, for example, argues that the Board should refrain from approving the revenue requirement submission without a commitment that the OPA will eliminate the "feature of its arrangements with LDCs" that allows electricity distributors to develop supplemental CDM programs.

55. In its collaboration with the electricity distributors towards the design of Province-wide CDM programs, the OPA acted pursuant to the directive of the Minister issued on April 23, 2010.¹⁰³ The directive states as follows:

LDCs will be permitted to **meet their CDM Targets by delivering** three types of conservation programs to distribution-connected consumers: (1) province-wide CDM programs developed by the OPA, in consultation with distributors ("OPA-Contracted Province-Wide CDM Programs"); (2) **collective LDC programs** designed by

¹⁰¹ Exhibit I-2-4, Attachment 1, page 19.

¹⁰² Transcript, Volume 2, page 128.

¹⁰³ Exhibit A-5-2, page 12.

groups of synergistic LDCs (“Board-Approved CDM Programs”); and (3) **individual LDC programs** (“Board-Approved CDM Programs”).

(Emphasis added.)

56. The foregoing passage from the directive makes clear that the concept of Board-Approved CDM Programs delivered by electricity distributors in meeting their prescribed targets specifically and explicitly formed part of the directions given by the Minister to the OPA. The directive goes on to state the following with respect to the targets:

LDCs will deliver OPA-Contracted Province-Wide CDM Programs to distribution system-connected customers to achieve all **or a portion of** their CDM Targets.

(Emphasis added.)

57. Intervenors like CME apparently disagree with these provisions of the directive issued to the OPA by the Minister. It simply cannot be the case, however, that the Board’s review of the OPA’s revenue requirement submission is intended to be a forum for parties to ask the Board to require the OPA to eliminate arrangements that were expressly authorized by a Minister’s directive. The notion that the Board should override or re-write directions issued to the OPA by the Minister shows just how far the proposals made in this proceeding by intervenors have strayed outside the scope of the Board’s review of the 2011 revenue requirement submission.

58. There are, of course, good reasons for the Minister’s directive with regard to Board-Approved conservation programs. Programs designed by electricity distributors can be tailored to meet the needs of their customers, such as winter-peaking, or high urban density. To the extent that programs designed by electricity distributors successfully introduce innovative features, consideration can be given to ways in which these features might be incorporated into the Province-wide programs. As stated by Ms McNally in response to a question from Mr. Millar:

MR. MILLAR: I'll leave this issue with one final question, and if you've already answered it, that's fine. My question is: Is it your view that purposely leaving space for LDCs to come to the Board for additional programs -- is it your view that that provides the best value for ratepayer money?

MS. McNALLY: What this allows is for LDCs to develop unique programs that meet their -- the needs of their consumer. And, again, the programs have to be TRC-positive to be approved by the Board.

So what we've got is an architecture that is customer focussed by having the province-wide programs that can

meet customers' needs across the province, but leaving space for specially targetted programs.¹⁰⁴

10. FIT/microFIT

59. OSEA makes assertions about the FIT program based on its assumption that the OPA has budgeted \$473,000 to manage the program.¹⁰⁵ The amount referred to by OSEA actually is \$473,000,000 and this is not the OPA's costs of managing the FIT program, but the program spending or "charges" related to the renewable generation electricity supply under contract to the OPA.¹⁰⁶ As for the resources that the OPA has directed towards management of the program, the response to GEC Interrogatory 25 shows that in excess of 24,000 microFIT applications had been received by the end of 2010, it shows the increase in OPA staff made available for review of these applications and it shows a consistent improvement in the average number of days to process conditional offers.¹⁰⁷

60. OSEA also submits that revenue from non-refundable registration fees for the FIT program should be earmarked for the management of the program.¹⁰⁸ There is no evidentiary basis in this case to support a conclusion that the revenue from non-refundable application fees coincides with the appropriate level of costs for management of the program. In fact, the evidence is that registration fees serve to focus attention on participants who are committed to the competitive procurement process.¹⁰⁹ Rather than arbitrarily allocating particular fees to particular elements of its operating budget, the OPA proposes, as it has done in the past, to use the registration fee revenue to reduce the required usage fee.¹¹⁰

61. GEC says that the OPA should be required to report on its success in resolving outstanding connection issues and the timeliness of its operation of the FIT tests and that the OPA should provide quantified milestones for number of applicants and MWs connected.¹¹¹ The OPA does not set quantified milestones for the number of FIT applicants and MWs connected, because the rate of participation in the program is customer-driven and is beyond the control of the OPA. The OPA regularly provides information about FIT applicants and MWs in its bi-weekly and quarterly status reports that are posted on its website. The OPA is currently working with electricity distributors and interested parties regarding connection issues, but the resolution of such matters is not within the sole control of the OPA.¹¹²

¹⁰⁴ Transcript, Volume 4, pages 81-2.

¹⁰⁵ OSEA Argument, page 2.

¹⁰⁶ Written Re-examination of Terry Gabriele, filed May 16, 2011.

¹⁰⁷ Exhibit I-2-25.

¹⁰⁸ OSEA Argument, page 2.

¹⁰⁹ Exhibit D-2-1, page 1.

¹¹⁰ Exhibit D-2-1, page 2.

¹¹¹ GEC Argument, pages 6-7.

¹¹² Transcript, Volume 1, page 126.

62. Board Staff submits that the OPA should clarify uncertainty about whether the Economic Connection Test will be completed in the current fiscal year.¹¹³ This point was addressed during the oral testimony of the OPA witnesses and Mr. Cronkwright confirmed the OPA's expectation that the Test will be completed within six months.¹¹⁴

11. Conservation Planning

63. GEC challenges the OPA's planning with respect to the government policy of conservation leadership, the 2015 conservation targets and the OPA's cost-effective efforts to exceed the conservation targets in the Long Term Energy Plan.¹¹⁵ These are matters for the IPSP proceeding.

64. The 2015 conservation targets referred to by GEC are set out in the Minister's Supply Mix Directive to the OPA dated February 17, 2011.¹¹⁶ This directive was issued more than three months after the OPA filed its 2011 revenue requirement submission. As the Board is aware, the consultation process for the IPSP was launched three months after the issuance of the Supply Mix Directive, on May 17, 2011.

65. According to its express words, the Supply Mix Directive provides the OPA with "direction for the preparation of an integrated power system plan" (referred to as the "Plan" in the Directive). In this context, the Minister directs the OPA to prepare a Plan to meet the government's goals, as set out in the Directive. The goals set out in the Supply Mix Directive include the 2015 conservation targets relied upon by GEC. In addition, the Supply Mix Directive says that "[t]he Plan shall seek to exceed and accelerate the achievement of these CDM targets if this can be done in a manner that is feasible and cost-effective".

66. In short, the Supply Mix Directive requires the OPA to proceed with development of an IPSP and it provides direction to the OPA with regard to the contents of the IPSP. In this proceeding, GEC seeks to have the OPA explain and justify planning matters that arise squarely from the Supply Mix Directive. It is clear, though, that compliance with the Supply Mix Directive, the economic prudence of the IPSP and the cost-effectiveness of the IPSP are all matters for the Board to consider in a proceeding under section 25.30 of the Act.

67. More particularly, GEC submits that the OPA should be required to demonstrate that "its plan, on its face, offers a timely and efficient path" to achieve the government's goals.¹¹⁷ The OPA submits that this is quite simply an incorrect proposition regarding

¹¹³ Board Staff Submission, pages 6-7.

¹¹⁴ Transcript, Volume 1, page 187.

¹¹⁵ GEC Argument, page 10.

¹¹⁶ Exhibit A-5-5.

¹¹⁷ GEC Argument, page 14.

the appropriate scope of the revenue requirement proceeding. The Board's review of the OPA's 2011 revenue requirement submission does not in any way encompass consideration of whether the IPSP, which the OPA will be developing and presenting to the Board through a separate process, offers a timely and efficient path to achievement of the government's goals. The government's goals for the IPSP are as set out in the Supply Mix Directive and, pursuant to subsection 25.30(4) of the Act, compliance with the Supply Mix Directive is an issue for the IPSP proceeding.

68. CME says that the OPA should perform, and make public, macroeconomic feasibility assessments with respect to the "affordability and sustainability" of the OPA's initiatives "and those of others" to implement "the government's green energy agenda" and that the Board should refrain from approving the revenue requirement submission without a commitment from the OPA that it will do so.¹¹⁸ However, the OPA's role in assessing cost-effectiveness arises in connection with the Board's review of the IPSP under section 25.30 of the Act. Subsection 25.30(4) provides that the Board shall review each IPSP submitted by the OPA to ensure that it is economically prudent and cost-effective.

12. Other Submissions

69. CCC asks the Board to exercise its powers under Rule 11 of its *Rules of Practice and Procedure* to order an amendment to the evidentiary record in this case by incorporating the evidentiary record in the THESL CDM case (EB-2011-0011). CCC also asks that the findings and directions in the THESL CDM case be incorporated by reference in this case.¹¹⁹ CME makes a very similar submission.¹²⁰

70. CCC and CME propose far more than a straightforward amendment to the evidentiary record of this case to incorporate an important item of evidence that is missing from the record. Their proposal that the entire record of one proceeding be added to another proceeding is nothing short of extraordinary, coming as it does after the oral hearing in this proceeding has been completed, argument in chief has been delivered and the submissions of intervenors and Board staff have been delivered. Further, the proposal by CCC regarding the incorporation of findings and directions from one proceeding into another does not fall within Rule 11 at all, because it is an altogether different proposition than amending the evidentiary record of the proceeding.

71. In any event, the OPA submits that it is unnecessary for the Board to consider amending the evidentiary record of this proceeding or incorporating findings from other proceedings into this case. The OPA stated in argument in chief that, in EB-2011-0011, it would present its proposals regarding the substantive role that it should play in reviewing Board-Approved CDM programs. Since the delivery of argument in chief, the

¹¹⁸ CME Argument, pages 7 to 10.

¹¹⁹ CCC Argument, page 12.

¹²⁰ CME Argument, page 19, para. 58.

OPA has submitted its proposal in EB-2011-0011. In its submissions dated May 24, 2011, the OPA stated as follows:

The OPA has not been given a specific role in either the Conservation Code or in OEB Filing Guidelines in the determination of duplication. As a result, the OPA has been addressing this issue on a case-by-case basis in response to requests by LDCs. In doing so, the OPA has developed a “purposive approach” to the duplication issue. ...

The OPA would be pleased to provide assistance to the Board in addressing the issue of duplication between the OPA-Contracted Province-Wide CDM Programs and proposed Board-Approved CDM Programs.¹²¹

72. GEC asserts, with respect to the Peaksaver program, that the OPA has locked Ontario in for four years to a program goal that falls far short of what is required.¹²² This submission is completely contrary to the evidence given in this case. The evidence is that the OPA has not “locked” the Peaksaver program into any goals. Ms McNally stated repeatedly in response to questions from counsel for Pollution Probe that the electricity distributors and OPA working group has developed a program forecast, not a program cap, and that the program will target the full universe of 4.7 million devices.¹²³ After its cross-examination of Ms McNally with regard to the Peaksaver program, Pollution Probe did not pursue this issue further in its argument.

73. GEC says that the Board “may wish” to require disclosure of particulars of the OPA’s pay for performance regime.¹²⁴ The OPA’s Executive Compensation Plan is discussed in considerable detail in the 2009 Annual Report that forms part of the evidence in this proceeding.¹²⁵ The particulars of the Plan provided in this evidence include areas such as Program Objectives, Program Governance, Program Description, and Performance Measures and Effect on Compensation. Contrary to GEC’s unsubstantiated concerns that “performance pay is likely to be a wasted incentive”,¹²⁶ the evidence explains that the compensation program is designed to meet multiple objectives, including:

~ to focus executives on meeting the OPA’s business objectives;

¹²¹ EB-2011-0011, OPA Submissions to the Ontario Energy Board, May 24, 2011 , page 1.

¹²² GEC Argument, page 13.

¹²³ Transcript, Volume 2, page 146.

¹²⁴ GEC Argument, page 15.

¹²⁵ Exhibit A-3-1, pages 38 to 41.

¹²⁶ GEC Argument, page 15.

- ~ to attract qualified and talented executive staff needed to carry out the OPA's mandate;
- ~ to retain valued executive staff; and
- ~ to provide flexibility to differentiate total compensation for specific executives based on individual results and demonstrated competencies.¹²⁷

74. LIEN says that the Board should place a condition on its approval of the revenue requirement submission that the materials and information on iCon, the LDC webinars and capability building initiatives relating to CDM programs should be made accessible to the public.¹²⁸ In support of this proposal, LIEN submits that the information available to LDCs and program participants through iCon has value to others.¹²⁹

75. One difficulty with the submission by LIEN is that LIEN did not bring out an evidentiary grounding, either through interrogatories or during cross-examination, to enable the Board to reach conclusions about the nature of the information on iCon and the suitability of this information being made available to the public. The reason why the iCon website and the LDC webinars are not opened up to the public is because these are intended to function as a "workspace" for program participants to focus on practical details of program operation. While the OPA would be pleased to discuss particular information needs with stakeholders such as LIEN, opening up iCon and the LDC webinars to the public is not a suitable way to address any such needs. The OPA will publish on the website the capability building initiatives referred to by LIEN.

13. Export Customers

76. APPrO, HQEM and Manitoba Hydro all oppose the OPA's proposal that its usage fee be charged to all consumers of Ontario electricity, including export customers. The fundamental flaw in the arguments made by these parties is that they pay no heed to the evidence that is on the record in this case.

77. APPrO, for example, finds it argument on the bald assertion that "the OPA provides no benefits to exporters".¹³⁰ HQEM asserts that its witnesses "both testified that exporters do not benefit from the OPA's CDM programs or from the OPA's supply procurement activities".¹³¹ Apparently, these arguments were developed without any reference to the evidentiary record of this case. In fact, HQEM's own witnesses made the following statement in their written evidence:

¹²⁷ Exhibit A-3-1, page 38.

¹²⁸ LIEN Argument, page 9.

¹²⁹ LIEN Argument, page 7.

¹³⁰ APPrO Argument, page 6, para. 27.

¹³¹ HQEM Argument, page 5, para. 17.

We agree that “export customers also benefit from the planning, conservation and procurement activities undertaken by the OPA” ...¹³²

Indeed, this evidence given by HQEM’s witnesses was relied upon by the OPA in its argument in chief.¹³³

78. Other parties have accepted that the evidentiary record in this proceeding reveals no disagreement with the proposition that export customers benefit from the activities of the OPA. GEC, for example, says in its argument:

Given that there is no disagreement that OPA’s planning and procurement activities benefit the export market, as a matter of fairness, these entities should not be allowed to be free riders on those efforts.¹³⁴

Similarly, SEC submits that, creating a fee structure that is equal to all consumers of electricity recognizes that export customers, like domestic customers, benefit from the activities of the OPA.¹³⁵

79. Another bald assertion by APPrO is that it is “absurd” to think that the OPA’s conservation function benefits exporters.¹³⁶ Others certainly do not see this as an absurd proposition, as appears from the following comments made in SEC’s argument:

Export customers benefit not only from transmission planning but generation planning, procurement and conservation. The cost and availability of electricity to Ontario-based consumers have a direct effect on the availability and cost of electricity to export-customers.¹³⁷

80. The OPA submits that its proposal for recovery of the usage fee should be accepted by the Board because the proposal reflects the integrated nature of the OPA’s activities that benefit all customers who purchase Ontario electricity. As Mr. Farmer stated in his testimony:

... it is difficult to me to take the functions individually without thinking of them in their holistic sense.

¹³² Exhibit L1.1, page 7.

¹³³ Argument in chief, page 7, para. 28 and footnote 16.

¹³⁴ GEC Argument, page 18.

¹³⁵ SEC Argument, page 20.

¹³⁶ APPrO Argument, page 7, para. 36.

¹³⁷ SEC Argument, pages 20-21.

So I think it is best to start with the role of the OPA and our mandate to provide reliable electricity system for Ontarians in the future.

So planning determines what is needed for the development of an operating -- or reliable operation of a system in the future for 20 years, and we debated that yesterday, and then procurements occur that enable the actual delivery of that system.

So from a generation perspective, planning identifies needs; government makes decisions, issues directives; and resources are procured that the IESO then can operate in the day-to-day operation of the system in the market, where it is my understanding exports are an economic function within that market.

Similarly, conservation is a part of that plan. It is a least-cost resource. It certainly goes towards the reliability of an electricity system with the development of demand response and the reduction of demand, which, in essence, is the need for generation and enables, again, the production of electricity to meet the peak.

But electricity must be planned and produced for every hour, and it is, in having enough capacity to meet that peak, that the other 8,759 hours tend to have surpluses, if all generators were running. So to me, it is the planning of a reliable system that creates the environment that exporters can function within. It is the operation of the market that they actually function within, is my understanding. But that is the way I see it for all three situations.^[1]

81. In essence, APPrO and HQEM seek to deflect the OPA's proposal to recover its fee on export volumes by urging the Board to require further studies. APPrO's idea is that there should be a study of "impacts"; it says that "the OPA must commit to procuring a comprehensive study of the impacts ... of extending its usage fee to exporters".¹³⁸ HQEM's idea is that the Board should require the OPA to do a cost allocation study.¹³⁹

82. The study of "impacts" proposed by APPrO was not supported by any of the witnesses who testified in this case. The OPA's expert witness and the HQEM expert witnesses all gave evidence about the considerations that should guide the Board's

^[1] Transcript, Volume 2, pages 32-3.

¹³⁸ APPrO Argument, page 4, para. 22.

¹³⁹ HQEM Argument, pages 8-9.

decision with respect to the fee proposal and a study of “impacts” was never mentioned in any of this evidence.

83. As for the cost allocation study proposed by HQEM, the submissions made by HQEM imply that the evidence of Mr. Todd and Mr. Roger was that this “would not be complicated”.¹⁴⁰ In fact, the evidence of Mr. Todd when asked about cost allocation during cross-examination was that it would involve some effort.¹⁴¹ HQEM’s submission that the work would not be complicated is apparently based on the view that “it would be acceptable to restrict the cost causality review to two ‘classes’ of fee-payers: domestic loads and exporters”.¹⁴²

84. While it is no doubt acceptable to HQEM that the OPA be required to carry out a study that is restricted only to a domestic-export focus, this is by no means fair or acceptable to other customers. CCC’s submission on this point is as follows:

For the OPA to move to a complex cost allocation exercise like that proposed by Elenchus would be, from the Council’s perspective, a slippery slope. Attempting to identify exactly what components of the OPA’s revenue requirement directly benefit exporters, without a detailed consideration of how the other components of the OPA’s [revenue requirement] impact other sectors would be unfair.¹⁴³

85. Many of the other points relied upon by APPrO, HQEM and Manitoba Hydro can readily be turned around to support the opposite of the conclusion reached by these intervenors. For example, APPrO says that it is clear that exporters should pay the IESO fee because, among other things, the IESO operates the physical assets that make exporting power possible.¹⁴⁴ Similarly, the OPA carries out the planning, procurement and conservation activities resulting in a supply of electricity that makes exporting possible. APPrO asserts that “export markets existed in Ontario long before the OPA came into existence”.¹⁴⁵ Similarly, export markets existed in Ontario long before the IESO came into existence and the domestic markets that are currently charged the OPA’s fee existed in Ontario long before the OPA or the IESO came into existence.

86. As stated in the OPA’s argument in chief, the resolution of this issue ultimately comes down to the application of certain fundamental principles that essentially are not in dispute as between the expert witnesses who testified in this case. The three fundamental principles, namely, full cost recovery, fairness and efficiency, are explicitly

¹⁴⁰ HQEM Argument, page 6, para. 24.

¹⁴¹ Transcript, Volume 2, pages 88-9.

¹⁴² HQEM Argument, page 6, para. 24.

¹⁴³ CCC Argument, page 15, para. 63.

¹⁴⁴ APPrO Argument, page 5, para. 24.

¹⁴⁵ APPrO Argument, page 6, para. 28.

relied upon by HQEM's expert witnesses in their written evidence.¹⁴⁷ For the reasons set out in the evidence of Concentric Energy Advisors,¹⁴⁸ in the OPA's argument in chief and in this reply argument, the OPA submits that these principles support approval of the OPA's proposal that its usage fee be charged to all consumers of Ontario electricity, including export customers. As stated in argument by SEC:

...where cost causality does not produce fair results or creates what are effectively "free riders", another principle such as benefits received may have a role. The OPA may be the ideal organization for this method to be used.¹⁴⁹

14. Conclusion

87. The OPA therefore respectfully requests that the Board grant the relief set out in its revenue requirement submission and summarized in its argument in chief in this proceeding.¹⁵⁰

All of which is respectfully submitted.

June 6, 2011



for

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¹⁴⁷ Exhibit L1.1, pages 3-4.

¹⁴⁸ Exhibit D-1-3.

¹⁴⁹ SEC Argument, page 20, para. 4.1.4.

¹⁵⁰ See OPA Argument in Chief, page 12, para. 40.

