



ONTARIO ENERGY BOARD

FILE NO.: EB-2007-0905

VOLUME: Issues Day

DATE: February 6, 2008

BEFORE:	Gordon Kaiser	Presiding Member and Vice Chair
	Bill Rupert	Member
	Cynthia Chaplin	Member

THE ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an application by Ontario Power Generation Inc. pursuant to section 78.1 of the *Ontario Energy Board Act, 1998* for an Order or Orders determining payment amounts for the output of certain of its generating facilities.

Hearing held at 2300 Yonge Street,
25th Floor, Toronto, Ontario, on Wednesday,
February 6, 2008, commencing at 1:05 p.m.

Issues Day

BEFORE:

GORDON KAISER	Presiding Member and Vice Chair
BILL RUPERT	Member
CYNTHIA CHAPLIN	Member

A P P E A R A N C E S

DONNA CAMPBELL	Board Counsel
ALLAN FOGWILL	Board Staff
RUSSELL CHUTE	
CHRIS CINCAR	
MICHAEL PENNY	Ontario Power Generation Inc.
JOSIE ERZETIC	
BASIL ALEXANDER	Pollution Probe
PETER FAYE	Energy Probe Research Foundation
DAVID MacINTOSH	
LARRY SCHWARTZ	
MARK RODGER	Association of Major Power Consumers of Ontario (AMPCO)
JOHN RATTRAY	Independent Electricity System Operator
RICHARD STEPHENSON	Power Workers' Union
ALFREDO BERTOLOTTI	
JOHN DeVELLIS	School Energy Coalition
ROBRRT WARREN	Consumers Council of Canada
DAVID POCH	Green Energy Coalition (GEC)

ALSO PRESENT:

ANDREW BARRETT	Ontario Power Generation Inc.
BARB REUBER	

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NO EXHIBITS WERE FILED DURING THIS PROCEEDING

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Description

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NO UNDERTAKINGS WERE FILED DURING THIS PROCEEDING

1 Wednesday, February 06, 2008

2 --- On commencing at 1:05 p.m.

3 MR. KAISER: Please be seated. The Board is sitting
4 today in connection with an application filed on November
5 30th, 2007 by the Ontario Power Generation Inc., under
6 section 78.1 of the Ontario Energy Board Act, seeking
7 approval for increases in payment amounts for the output of
8 certain of its generating facilities effective April 1st,
9 2008.

10 The Board on January 24th of this year issued a
11 Procedural Order in this matter setting down certain things
12 to be heard today, essentially two things. First is the
13 issues that are relevant to this proceeding, and in that
14 Procedural Order at appendix P, a draft issues list was
15 circulated to all interested parties and we will hear
16 submissions today on that.

17 The second matter, which we will hear tomorrow in
18 light of the weather, relates to the application by the
19 applicant for an order of the Board declaring OPG's current
20 payment amounts interim, and increasing the payment amounts
21 as of April 1st, 2008.

22 Those requested increases are set out in the
23 applicant's material; namely, an interim order increasing
24 OPG's payment amounts on an interim basis to \$35.35 per
25 megawatt hour for hydroelectric production and \$53 per
26 megawatt hour for nuclear production.

27 As I have indicated, we will hear submissions on that
28 tomorrow. Those issues go both to whether the Board has

1 jurisdiction to make that interim order and, if it does,
2 whether it should issue the order.

3 May I have the appearances, please? Mr. Penny.

4 **APPEARANCES:**

5 MR. PENNY: Yes. Good afternoon, Mr. Chairman,
6 Michael Penny. I am counsel to the applicant, Ontario
7 Power Generation Inc. With me today are Andrew Barrett and
8 Barb Reuber, who are with the regulatory group at OPG, and
9 Josie Erzetic, who is assistant general counsel with OPG.

10 MR. KAISER: Thank you. Mr. Alexander.

11 MR. ALEXANDER: Basil Alexander, counsel for Pollution
12 Probe.

13 MR. KAISER: Thank you.

14 MR. FAYE: Peter Faye, counsel for Energy Probe, and
15 with me are David MacIntosh and Larry Schwartz, both of
16 Energy Probe.

17 MR. KAISER: Mr. Faye.

18 MR. RODGER: Good afternoon, Mr. Chairman. Mark
19 Rodger appearing as counsel to the Association of Major
20 Power Consumers of Ontario.

21 MR. KAISER: Thank you, Mr. Rodger.

22 MR. RATTRAY: John Rattray appearing as counsel on
23 behalf of the Independent Electricity System Operator.

24 MR. KAISER: Mr. Rattray.

25 MR. STEPHENSON: Richard Stephenson appearing as
26 counsel for the Power Workers' Union. Good afternoon.

27 MR. KAISER: Thank you.

28 MR. BERTOLOTTI: Alfredo Bertolotti with Power

1 Workers' Union.

2 MR. KAISER: Thank you.

3 MR. DeVELLIS: Good afternoon, Mr. Chairman. John
4 DeVellis for the School Energy Coalition.

5 MR. KAISER: Mr. DeVellis.

6 MS. CAMPBELL: Donna Campbell for Board Staff. With
7 me is Allan Fogwill, Russell Chute and Chris Cincar, and I
8 have been asked by Mr. Warren to advise the Board Mr.
9 Warren appears for CCC and he will not be attending this
10 afternoon. He will be appearing to make argument tomorrow,
11 and Mr. Poch, who is counsel for GEC, will not be appearing
12 today, either.

13 MR. KAISER: All right. Thank you. Mr. Penny, we
14 thought we would, if it is agreeable to you, proceed with
15 the draft issues list and order and take them one by one,
16 allow you to start off, and anyone opposing or -- opposing
17 your submissions can speak up or if anyone has a different
18 view.

19 MR. PENNY: I think that is the best way to do it, Mr.
20 Chairman. It's the most logical and keeps us organized.

21 The only subtlety to that I might recommend is that
22 there are some -- we have, of course, the draft issues list
23 prepared by Staff. Each party has put in their submissions
24 on those. There is obviously a number that no one makes
25 any submission on, which we can just pass over.

26 It would be my suggestion that those who are
27 suggesting the change could perhaps be the proponent of
28 their position. If it is me, I will go first. If it is

1 someone else, they could go first and we would respond to
2 that.

3 MR. KAISER: All right. Do you have anything on 1.1?

4 MR. PENNY: I do not, sir.

5 MR. KAISER: Anyone have anything on 1.1? All right.
6 Let's move on to 2.1. Anything, Mr. Penny?

7 **CONTESTED ISSUE 2.1 AND 2.2**

8 **SUBMISSIONS BY MR. PENNY:**

9 MR. PENNY: Yes. Both 2.1 and 2.2 I can perhaps deal
10 with together, because we don't have any concerns on the
11 substance of these issues.

12 If you have our written submission, we actually have
13 the proposed wording which we're suggesting. The only
14 purpose of the change in wording is to keep the description
15 of the issue neutral, so that there is no -- this has to do
16 with whether the capital structure and ROE should be
17 determined on a technology basis or on a blended basis.

18 We understand that that is an issue that parties may
19 wish to pursue, and we have no objection to that. It is
20 simply a question of drafting it in a way that keeps the
21 issue neutral.

22 So our suggested wording is simply intended to --

23 MR. KAISER: Why don't you read into the record your
24 wording and see if we can get agreement?

25 MR. PENNY: All right. On issue 2.1, it would read:
26 What is the appropriate capital structure for OPG's
27 regulated business for the 2008 and 2009 test years?
28 Should the same capital structure be used for both OPG's

1 regulated hydroelectric and nuclear businesses? If not,
2 what capital structure is appropriate for each business?

3 Then there is essentially the same revision to 2.2,
4 only dealing with the ROE.

5 MR. KAISER: Any objections from any of the parties to
6 the revised wording to 2.1 and 2.2?

7 All right, thank you. Let's move on.

8 MR. DeVELLIS: Mr. Chairman.

9 MR. KAISER: I'm sorry, Mr. DeVellis.

10 MR. DeVELLIS: Thank you. On issues 2.1 and 2.2 and
11 2.5, we have no objection to the proposed wording on the
12 understanding it doesn't change the scope of the issue. It
13 is just rewording it to make it neutral.

14 MR. KAISER: That's my understanding. Is that
15 correct, Mr. Penny?

16 MR. PENNY: Yes.

17 MR. KAISER: All right. 2.3.

18 MR. PENNY: I have nothing on 2.3. My next one is
19 2.5.

20 MR. KAISER: Before we move on to 2.5, does anyone
21 have anything on 2.3?

22 MR. RUPERT: Can I ask, Ms. Campbell, you were in
23 communication with Mr. Warren, I think. I know, based on
24 my little marginal notes, 2.3 was an issue on which CCC had
25 made some comment.

26 Do you know if Mr. Warren was satisfied that you
27 didn't need to bring those issues to this hearing? I am
28 not sure I understand --

1 MS. CAMPBELL: Well, communication from Mr. Warren was
2 as follows, and he did not address the substantive matter.
3 He left his letter as it was and simply said that he would
4 not be attending this afternoon's session:

5 "I did not intend to add anything to the
6 submissions on the issues list already contained
7 in my letter of February 1st, 2008."

8 MR. PENNY: If I might respond to that, Mr. Rupert.
9 It was my understanding that Mr. Warren's concern was
10 simply whether we should, in this hearing, be deciding that
11 issue, because that is a future issue.

12 I would understand, the way this is worded, that Mr.
13 Warren would be at liberty to advance that position in the
14 proceeding. So I didn't read his comment as necessarily
15 asking for an amendment to the issue, but simply wanting
16 clarification that he could raise the question of whether
17 it was appropriate, in this hearing, to decide that future
18 issue or not.

19 MR. RUPERT: Thanks.

20 MR. PENNY: And we have no problem with that.

21 **CONTESTED ISSUE 2.5**

22 **SUBMISSIONS BY MR. PENNY:**

23 MS. NOWINA: All right. You are on 2.5?

24 MR. PENNY: So 2.5, we had a wording change, but this
25 is also an area in which I think Mr. Rodger and perhaps
26 others had something that he may want to say. But maybe I
27 will just give my pitch first, and then we can hear from
28 Mr. Rodger.

1 Again, we have no issue with the substance, and it is
2 our -- again, our redrafting of 2.5 is simply to leave the
3 question or the issue neutral as to the implications of
4 deferral and variance accounts on OPG's financial risk.

5 So we suggest 2.5 read:

6 What are the implications of the deferral and variance
7 accounts on OPG's financial risk? How should the
8 implications be considered when determining the appropriate
9 return on equity?

10 MR. KAISER: Mr. Rodger.

11 **SUBMISSIONS BY MR. RODGER:**

12 MR. RODGER: Yes, sir. Maybe I will start by just
13 reading how AMPCO has proposed this issue, which we filed
14 on February 1st, and, of course, we were working off Board
15 Staff's issues list. So we have reformatted the issue as
16 follows:

17 How should OPG's financial risk be evaluated, taking
18 into account its use of deferral and variance accounts, and
19 OPG's status as a regulated and government-owned enterprise
20 when determining the appropriate return on equity?

21 So we have no quarrel with the idea of having this
22 issue being neutral. But we do think it should be
23 expanded, seeing that the thrust of the issue has to do
24 with OPG's financial risk, and that it should be broadened
25 to reflect the fact that OPG, with respect to these
26 prescribed assets, will be regulated and the fact that OPG
27 is an entirely government-owned entity. So that these
28 factors have to be taken into account in terms of the

1 dynamics on the financial risks that OPG, in fact, faces.

2 To give you an example, Mr. Chairman, in any rate case
3 whether it is distribution or transmission, the OEB starts
4 by working off existing rates and we're going to suggest
5 that you do the same in this case.

6 In this case, when we look at existing rates, we see
7 those that were established by the province, and in that
8 province, Ontario made certain judgment calls when it came
9 to the ROE and we take that as the current situation for
10 this hearing.

11 So in AMPCO's view, the fact of government ownership
12 of OPG has resulted in the province bringing to bear a
13 certain set of criteria, which is also relevant in how you
14 establish future payments on a go-forward basis. The
15 province's goal was an adequate return, not the maximum
16 possible ROE.

17 If you refer, for example, to the Memorandum of
18 Agreement -- I don't think you have to refer to it but it
19 is included in OPG's prefiled materials -- it talks about
20 how Ontario, as the sole shareholder, may provide certain
21 financial support in certain occasions. We are certainly
22 aware that OEFC has provided funding on the third tunnel at
23 Beck. You look at other parts of the prefiled evidence,
24 the rating agencies, the DBRS reports and others it talks
25 about the role and influence on the province, on the
26 financial integrity of OPG.

27 So in our view the fact that it is government-owned,
28 and it is regulated goes directly to issues of financial

1 risk and that's why we seek to have the issue expanded so
2 that we can pursue that theme in the hearing.

3 MR. KAISER: Anyone supporting Mr. Rodger in this
4 regard? Mr. Penny.

5 **FURTHER SUBMISSIONS BY MR. PENNY:**

6 MR. PENNY: Yes, thank you, sir. As I understand the
7 proposal, it is to introduce two concepts into the issue.
8 One is that OPG or at least the assets we're concerned
9 with, of course is regulated, and the second is that these
10 assets or that OPG is owned by the government.

11 In my submission, on the first, that is the adding of
12 the word that OPG is regulated, that is, in my submission,
13 entirely superfluous. The question of course only arises
14 because OPG's assets are regulated. All ROE enquiries
15 before this Board are of regulated utilities. We wouldn't
16 be here if it wasn't regulated. So that, in my submission,
17 adds nothing to the situation.

18 If we weren't regulated, we wouldn't be here because
19 the market would decide what dividends were available to
20 the shareholder. The very reason we're here is because it
21 is regulated and we need to determine what an appropriate
22 return on the investment is.

23 With respect to government-owned, I simply say that
24 there is a long history of this tribunal and other
25 tribunals applying what's often described as the stand-
26 alone principle. It doesn't matter, in my submission, who
27 owns you. The issue is not the risk of your owner or your
28 affiliates or your non-regulated businesses. The issue is

1 the risk of the regulated business.

2 They effectively want to say or Mr. Rodger effectively
3 wants to say if you are owned by the government, you have
4 lower risk and therefore your ROE should be lower. The
5 corollary, in my submission, would be that if you were
6 owned by Harry Kravitz at R.J.R., your risk would be higher
7 and that, therefore you would be entitled to a higher rate-
8 of-return. And that isn't how it is done, in my
9 submission.

10 I have prepared, I have gathered some excerpts from a
11 number of precedents which I forwarded to everyone the
12 other day. I won't take you through them all. Each one,
13 I've got three or four that are kind of going back into the
14 history, just to show that this is a long-standing
15 principle and then two or three of recent history before
16 this Board.

17 If you wouldn't mind though, I would refer perhaps to
18 two or three of these. Do you have that bundle? It was
19 sent by e-mail yesterday. I have hard copies.

20 MS. NOWINA: Maybe if you have an extra copy.

21 MR. PENNY: Yes.

22 So this bundle is, as I said, some excerpts from some
23 utility tribunal decisions dealing with ROE.

24 They all touch on the same subject but I am only going
25 to refer to one or two of them. If you wouldn't mind
26 turning to page 7 of this bundle. I have written page
27 numbers in the upper right.

28 This is a decision of the National Energy Board

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1 dealing with TransCanada Pipelines from 1980. And starting
2 on page -- my numbered page 7, it is 3.2 of the original
3 report. The very bottom paragraph it says:

4 "The Board agrees that the companies applied for
5 deemed capital structure serves to insulate the
6 ratepayers from the capital cost associated with
7 its diversification program and considers it as
8 efficient as might be hoped for by ratepayers in
9 terms of a pre-tax cost of capital. The Board
10 therefore approves the use of a deemed capital
11 structure. The Board has noted the concerns
12 expressed by intervenors that the ratepayers
13 continue to be insulated from the capital costs
14 of diversification. The onus will be on the
15 company to demonstrate over time that this
16 objective has been met."

17 So the issue there was, it wasn't the owner as such.
18 But it was other diversified non-regulated activities, and
19 the concept was that ratepayers be insulated from the
20 implications of those activities.

21 Then the next, if you would turn to page 12, please.
22 This is an excerpt from the Alberta Public Utilities Board
23 in the Nova case of 1993. Starting at the bottom of page
24 12, it says:

25 "The Board, in accordance with such well-
26 established concepts and methods has in previous
27 decisions determined that AGTD should be allowed
28 to earn a fair return on its rate base on a

1 stand-alone basis. In its decision E92086 dated
2 October 26, 1992, the Board recognized that Nova
3 is not a pure utility operation and that Nova's
4 non-AGTD operations include diversified
5 activities with dissimilar business risks to
6 those of AGTD. Accordingly, the Board considers
7 that the components of AGTD's capital structure
8 and the cost factor for each component should be
9 determined on a stand-alone basis consistent with
10 its business risk and its ability to attract
11 capital on reasonable terms."

12 So that's a little bit of the history. The Board has
13 -- this board has applied that very principle in a number
14 of cases and in a number of electricity cases relatively
15 recently.

16 I have put in the bundle -- I won't refer to them all,
17 but I put in the bundle some excerpts from Hydro One
18 Networks' first transmission case in which the Board found
19 that Hydro One should get -- and of course, it is
20 government-owned -- found that Hydro One should get a ROE
21 approximately equivalent to other major Canadian electric
22 utilities, major gas pipelines, and Ontario gas utilities.

23 In the -- then the next excerpt I have, starting at
24 page 22, deals with the generic municipal LDC case. The
25 rate handbook. It comes to the conclusion that
26 municipalities, government-owned municipal utilities should
27 have the option of seeking market-based rates of return.

28 Then finally the one I will take you to specifically

1 is the last one, a decision of this Board on Toronto Hydro
2 from 2006, a case that was ably argued by Mr. Rodger for a
3 government-owned utility.

4 If you would turn to page 29 of the bundle, paragraph
5 527 of the Decision, the Board says:

6 "While there is a strong argument that the return
7 on equity should be updated, utilities that file
8 on a forward year basis, the Board is concerned
9 that this will create confusion on capital
10 markets. It may be perceived that a utility is
11 penalized because it chose to file on a forward
12 year basis. Utilities, of course, compete with
13 each other in capital markets which adds another
14 dimension to the problem and as a matter of law,
15 utilities are entitled to earn a rate-of-return
16 that not only enables them to attract capital on
17 reasonable terms but is comparable to the return
18 granted other utilities with a similar risk
19 profile. The manner in which they file their
20 application does not file within the
21 jurisprudence."

22 So in my submission, clear recognition on the part of
23 this and other boards that the ROE capital structure
24 question should be dealt with on a stand-alone basis. I
25 might say that the OEB's approach that I have just cited is
26 followed in Quebec and B.C. and Alberta for government-
27 owned utilities, as well, Hydro Quebec, B.C. Transmission,
28 municipally-owned distribution companies.

1 So my bottom line, I suppose, on this is we can go
2 through this all again, but I ask, rhetorically, is it
3 really necessary?

4 In my submission, the matter has been resolved and we
5 need not go round that particular mulberry bush again in
6 this case.

7 MR. KAISER: Mr. Rodger, did you have anything you
8 want to say in response?

9 **FURTHER SUBMISSIONS BY MR. RODGER:**

10 MR. RODGER: Just to say, Mr. Chairman, that we
11 disagree fundamentally with Mr. Penny, and, in AMPCO's
12 view, Ontario Power Generation is fundamentally an entirely
13 different beast than the other utilities, including Ontario
14 transmitters and distributors that he has referred to.

15 When you look at the heart of the request for an
16 increase in ROI, the message seems to be they should get
17 that, because they are, quote/unquote, "just like any other
18 utility", just like any other privately-owned, investor-
19 owned utility. We say that is not the case.

20 It was because of the government ownership that when
21 rates were first set, the province said, after looking at
22 all of the factors, We think that a higher ROE, 10 percent,
23 is inappropriate. We think that 5 percent is appropriate,
24 given our role and given the role of the specific assets
25 that you are hearing about.

26 So we think it is an apples-to-oranges comparison that
27 my friend is trying to draw and that this isn't the day to
28 argue the merits of that. This is the day to determine

1 whether it is an issue or not that should be pursued in the
2 hearing. The merits will be at the end of the day for the
3 Board to decide. For those reasons, we would argue that
4 this issue should be expanded to include the wording that
5 AMPCO has put forward.

6 MR. KAISER: Thank you. Let's go on to 3.1.

7 MR. RUPERT: Mr. Penny, just one question on this.

8 MR. PENNY: Yes.

9 MR. RUPERT: The cases that you have quickly referred
10 to here all involve what I think everyone would agree are
11 utilities.

12 OPG seems to be different, in that it doesn't operate
13 a wires or pipeline business for which there is no market.
14 There is a market for electricity, the commodity
15 electricity, and through a public-policy choice it has been
16 moved into first regulation under the Act and now here.

17 So are you saying that OPG is a utility in the normal
18 conventional sense, that it happens in front of rate
19 regulation boards like ours?

20 MR. PENNY: Perhaps not. But what I am saying is that
21 effectively it is, because it is regulated. In other
22 words, whatever the policy reason was, I presume it had
23 something to do with the amount of generation that OPG
24 controlled in the province, and the province decided that
25 the way to deal with it, at least in the short term, was to
26 make the base load assets regulated.

27 So from that point forward, I say that you look at it
28 as if it was a utility, because it's being regulated

1 presumably on the basis that there is a concern that market
2 forces are not adequate to provide appropriate pricing for
3 the services; just as with a utility, a traditional
4 utility.

5 MR. RUPERT: The other question was just on your first
6 point - not Mr. Rodger's point, but on your first point,
7 about -- you have taken exception to what you view is less
8 than neutral wording, and that is equating the existence of
9 a deferral and variance account with the reduction of risk.

10 I was just sort of surprised by that, because I
11 thought, by definition, it's axiomatic that reduction of
12 variability equals reduction in risk. I wasn't sure I
13 understood whether you were saying that these deferral or
14 variance accounts increase OPG's risk or what.

15 MR. PENNY: No. My -- I have thought about this, Mr.
16 Rupert. My response is that they don't necessarily -- I
17 agree conceptually they do, but until you look at them, you
18 don't know whether they do or not. They might be
19 minuscule. They might be de minimus. They might have
20 nothing in them. It is more of a factual rather than a
21 conceptual issue that we're raising.

22 MR. RUPERT: All right. Thanks.

23 MR. KAISER: Anything on 3.1, Mr. Penny?

24 MR. PENNY: I had nothing. I think perhaps Mr. -- my
25 notes said that the Schools had an issue on 3.1.

26 **CONTESTED ISSUE 3.1**

27 **SUBMISSIONS BY MR. DEVELLIS:**

28 MR. DeVELLIS: Yes, thank you. Mr. Chairman, we

1 didn't have any specific revisions to this issue. Ours is
2 more a comment on the scope of the issue, and that is that
3 SEC understands that this issue included into consideration
4 of whether -- what constitutes refurbishment under the
5 regulations.

6 It is really an issue of what falls under section
7 6.2.4, which is something we think the Board will have to
8 consider when it looks at this issue.

9 So those are all of the submissions we had. It was
10 just a matter of clarifying the scope.

11 MR. KAISER: Mr. DeVellis, you're content with the
12 existing wording?

13 MR. DEVELLIS: I'm sorry?

14 MR. KAISER: You're content with the existing wording?

15 MR. DEVELLIS: Yes, we are.

16 MR. KAISER: Thank you. 3.2, anything, Mr. Penny?

17 MR. PENNY: I had nothing on 3.2.

18 MR. KAISER: Anyone on 3.2? All right.

19 3.3, anyone? 3.4? Okay. 3.5, anyone?

20 MR. PENNY: Sorry, 3.4. Sorry, Mr. Chairman. Bear
21 with me for one moment. I did have a note on 3.4. I
22 thought someone had raised an issue, but it wasn't us.

23 MS. CAMPBELL: I believe Schools has something on 3.5.

24 MR. KAISER: Oh. Mr. DeVellis, 3.5.

25 **CONTESTED ISSUE 3.5**

26 **SUBMISSIONS BY MR. DEVELLIS**

27 MR. DEVELLIS: Yes. 3.5 deals with capital
28 expenditures that are in addition to the levels set out in

1 the regulations, and, again, we don't have any comments or
2 issues with the specific wording of the issue, just to
3 clarify this also includes a consideration of whether OPG
4 has done an asset condition assessment, and, if so, whether
5 that assessment justifies the additional capital spending.

6 MR. KAISER: Any problem with that, Mr. Penny?

7 **SUBMISSIONS BY MR. PENNY:**

8 MR. PENNY: No. As I understand it, Mr. DeVellis
9 isn't asking for a change, and we, frankly, would see that
10 as a sub-issue. That wouldn't be necessarily caught in the
11 provision, so...

12 MR. KAISER: Thank you. I think you had something on
13 3.6, Mr. Penny?

14 MR. PENNY: Yes. 3.6 is -- the change in wording that
15 we propose really arises from the concern that the focus
16 should be on the costs that result from business case
17 requirements and policy thresholds, rather than on the
18 policy thresholds and the business case requirements
19 themselves. So we are simply proposing this change in
20 wording not to restrict the scope of the enquiry, as such,
21 but to keep the focus where we say the focus ought to be,
22 which is --the job of the Board here is to determine just
23 and reasonable payment amounts and I guess not to consider
24 whether OPG's business case requirements are or are not
25 particular -- or appropriate for its business.

26 So it is not a change in substance, I don't think, but
27 a change in focus, if you will.

28 MR. KAISER: Thank you. Any objection to the changed

1 wording?

2 MR. RUPERT: Mr. Penny, I have a question. It is not
3 on the substance, but just on the wording. Your revised
4 version is: Are the costs that flow from the
5 capitalization policy and the process appropriate?

6 The costs are going to flow at some point, whether
7 they're through current period or depreciated down the
8 road. I mean, the costs that are incurred will flow
9 somewhere.

10 You say "the costs that flow". Are you referring to
11 the impact on whether it is OM&A, depreciation, or
12 whatever, for the 21-month period that OPG has applied for?

13 MR. PENNY: Yes. That should probably say: The cost
14 impacts on payment amounts. I don't think we're speaking
15 about costs at large. I mean, OPG will have whatever
16 costs. It is the allowable costs, if you will.

17 MR. RUPERT: I just wanted to clarify that. All
18 right. Thanks.

19 MR. KAISER: Thank you. 4.1. Anyone? Mr. Rodger.

20 **CONTESTED ISSUE 4.1 AND 5.1**

21 **SUBMISSIONS BY MR. RODGER**

22 MR. RODGER: Yes, sir. Maybe what I will do is
23 combine AMPCO's proposed wording 4.1 and 5.1, because it's
24 the same grounds for each. Maybe I will just read for the
25 record the addition in 4.1 which has to do with production
26 forecasts.

27 AMPCO has added the following words:

28 What production benchmarks, including the use of a

1 comparator and cohort analysis involving other members of
2 the North American generation sector, where appropriate,
3 can be applied to the assessment of OPG's production
4 planning for its regulated assets?

5 Then under 5.1, operating costs, AMPCO has proposed
6 the following words in addition to what the Board has
7 proposed for 5.1 as follows:

8 What OM&A benchmarks, including the use of a
9 comparator and cohort analysis, involving other members of
10 the North American generation sector, where appropriate,
11 can be applied to the assessment of OPG's OM&A budgeting
12 for its regulated assets?

13 Sir, the reasons that AMPCO believes that these
14 issues, two issues, should be expanded to deal with
15 benchmarking is that they are a core feature of the
16 application and arise, once again, from the Memorandum of
17 Agreement between OPG and the province.

18 If you look to that, to that Memorandum of Agreement,
19 under numerous sections, it prescribes that OPG shall take
20 benchmarking into account.

21 So for example, under the mandate, part A of the
22 Memorandum of Agreement, under section 3, it indicates that
23 OPG will benchmark its performance in these areas against
24 CANDU, nuclear plants worldwide, against other top
25 quartile, private- and publicly-owned generators et cetera.
26 If you move on in the agreement, further to generation
27 performance and investment plans. In parts 1 and 2, again
28 specific references to benchmarking. Benchmarking will

1 need to take into account key specific operational
2 technology factors including the operation of CANDU
3 reactors worldwide, et cetera.

4 So in our view the Memorandum of Agreement makes it
5 perfectly clear that this isn't something that is somehow
6 discretionary of OPG. It is something that they shall do.

7 OPG itself has prefiled evidence on benchmarking,
8 Exhibit A1, tab 4, schedule 3, starting at page 15.

9 So in our view, it is clearly within scope. It is
10 contemplated by the memorandum. And AMPCO certainly would
11 want to explore benchmarking in the context of these two
12 issues, production forecasts and operating costs. For
13 those reasons, we think they're appropriate for this issues
14 list.

15 MR. KAISER: All right. Thank you, any other party
16 have submissions on 4.1 and 5.1? Mr. DeVellis.

17 **SUBMISSIONS BY MR. DEVELLIS:**

18 MR. DeVELLIS: Yes, sir. We had a different proposal
19 with respect to probably much simpler than what Mr. Rodger
20 is proposing. That is that the words "and the results
21 flowing from it," be inserted into the first sentence
22 before the word "appropriate." And that is just -- well,
23 it is probably self-evident, that what you're looking at
24 the methodology that you are also looking at the results
25 that flow from the methodology. If that is the case, we
26 probably don't need the additional wording but if there is
27 a dispute about that, then we would submit that we add
28 those words, as I have indicated.

1 MR. KAISER: All right. Thank you. Mr. Rodger. Mr.
2 Faye.

3 SUBMISSIONS BY MR. FAYE:

4 MR. FAYE: Mr. Chair, Energy Probe would like to
5 expand that issue even further, if we may, and that is to
6 include capital refurbishment costs.

7 MR. KAISER: In both of them?

8 MR. FAYE: We don't find that it fits necessarily
9 under either of these headings. It's not a production
10 forecast. It's not an operating cost. Ad there is no
11 convenient spot to put it into the capital issues. But we
12 think limiting the scrutiny to just OM&A is missing a large
13 category of costs that should be benchmarked against other
14 comparable utilities.

15 MR. KAISER: All right. Thank you.

16 MR. RUPERT: Mr. Rodger, I just wanted to ask about
17 your proposals. I think I can understand why you would
18 raise benchmarking and so on in the context of operating
19 costs but I am struggling a bit on the production forecasts
20 for these assets that have been operating or are operating
21 in our ISO markets and have been operating for years. I'm
22 not sure what you are contemplating for benchmarking under
23 4.1. 5.1 I have a better appreciation; 4.1 I am struggling
24 a bit.

25 MR. RODGER: Well, I think we would want to explore.
26 This is also linked to a further submission I will make,
27 Mr. Rupert, on design and payment amounts around
28 incentives. But it is to explore what other, if I can call

1 them, mechanisms -- maybe that is a broad category for
2 benchmarks, but are there other mechanisms on the
3 production side that we should look to and compare
4 production forecasts the way that OPG is managing it. So
5 it is benchmarking in a broad sense. I think when you hear
6 my submissions further on incentive and payment mechanisms,
7 you will see how they're linked together.

8 MR. RUPERT: Okay, thanks.

9 MR. KAISER: Mr. Penny, did you want to respond?

10 MR. PENNY: Yes, thank you, sir.

11 **FURTHER SUBMISSIONS BY MR. PENNY:**

12 MR. PENNY: Our concern, if you will or objection to
13 the addition of these is not really a matter of substance
14 but more a matter of principle.

15 Mr. Rodger is right that the Memorandum of
16 Understanding refers to benchmarking, indeed, OPG's
17 evidence refers to the benchmarking. So we're not saying
18 that benchmarking could be reasonably said to be off the
19 table.

20 The issue is really one of principle and the function
21 of the issues list. I don't think it is necessary to turn
22 it up, but I will just read a brief passage from one of the
23 Board's decisions from Issues Day in the Hydro One Networks
24 case. It was the Bruce-Milton transmission line on issues.
25 And the quote is:

26 "The Board does not believe it is appropriate to
27 define the issues list in complete detail. For
28 many of the issues, the Board expects that

1 subissues will arise during the course of the
2 proceeding which will need to be addressed in
3 argument and in the final decision. It is not
4 possible to identify all of those detailed issues
5 now, so early in the process. The Board is
6 therefore hesitant to include detailed subissues
7 on the issues list if the matters are otherwise
8 included in a broader issue."

9 The matter of principle is simply that we don't view
10 the issues list or the discussion about what should be on
11 the issues list as being a way for people to get their
12 agendas on the case. We take no issue with benchmarking
13 here. We just don't think it is necessary to add it. It
14 is captured by the terminology that is already adopted in
15 4.1 and 5.1. So it is for that reason that we don't think
16 it is necessary. But as I say, we don't object to
17 benchmarking being explored.

18 With respect to Mr. DeVellis's point. We -- again,
19 not sure the additional language is necessary. We don't
20 object to his point, in fact we support the concept because
21 it places the focus on the costs and the revenues, not
22 necessarily on the business systems that are used to
23 develop that.

24 But again, we just don't see that as being necessary,
25 given the existing wording.

26 MR. KAISER: What about Mr. Faye's point?

27 MR. PENNY: With respect to Mr. Faye, that's the first
28 I have heard of that one.

1 MR. KAISER: Do you want to think about it?

2 MR. PENNY: OPG hasn't done any -- or hasn't put in
3 any evidence of capital benchmark, capital spending
4 benchmarking in its filing. But I guess, again, we don't
5 object to that being something that someone might raise.
6 We just don't think it is necessary to add it to the issues
7 list. If someone wants to say that you should do
8 benchmarking or wants to put in some evidence of someone
9 else who does, and that it has some beneficial effect, we
10 would say, they would be at liberty to do that.

11 MR. KAISER: Are you happy with that, Mr. Faye?

12 MR. FAYE: Yes, Mr. Chair.

13 MR. KAISER: Thank you. All right. We skipped over
14 4.2. Anything on that from anyone? No. All right.

15 5.2. Nothing? 5.3.

16 **CONTESTED ISSUE 5.3**

17 **SUBMISSIONS BY MR. PENNY:**

18 MR. PENNY: We had one point on 5.3, it is really the
19 same as the point that I made about the capitalization
20 policy and capital project approval process.

21 It's not a change of substance, just a change in
22 focus, if you will. So we're proposing to have 5.3 read:

23 Are the 2008 and 2009 human resource-related costs,
24 wages salaries benefits and incentive payments, FTEs and
25 pension costs, appropriate?

26 It again as we say in the description, the change is
27 intended to place the focus on the costs resulting from the
28 employees, rather than more, sort of, business oriented

1 issues, if you will.

2 MR. KAISER: Any objection to Mr. Penny's proposed
3 changes to 5.3?

4 **SUBMISSIONS BY MR. DEVELLIS:**

5 MR. DeVELLIS: Mr. Chairman, it does seem to us that
6 OPG is trying to restrict the scope of that issue which
7 would prevent us from examining employee levels. In our
8 view, we can't examine HR costs without looking at employee
9 levels. It seems from what Mr. Penny has said he wants to
10 preclude examination of that issue. So on that basis, we
11 would oppose the proposed wording.

12 MR. KAISER: Is that right, Mr. Penny?

13 MR. PENNY: No. We have included in replacement for
14 the words "including employees levels, FTEs" and the reason
15 we have done that is because the FTEs are actually the
16 relevant measure for cost purposes, because that is
17 measuring a full-time unit, if you will, whereas if you
18 have three part-time people, the cost of that is one FTE,
19 if they're only working a third of a day each.

20 So we say that that it is include under the concept of
21 FTEs, but in the relevant way. In other words, what's
22 driving cost?

23 MR. KAISER: All right. But you are not attempting to
24 exclude evidence or discussion on employee levels?

25 MR. PENNY: Not really, no. In fact, no. I should
26 say unqualified.

27 MR. KAISER: Is that satisfactory?

28 MR. DeVELLIS: Yes, sir.

1 MR. KAISER: Thank you. All right. So we are on 5.4.
2 Anything there? 5.3.

3 MR. DeVELLIS: Sorry, Mr. Chair.

4 MR. KAISER: Mr. DeVellis.

5 MR. DeVELLIS: We had just a point of clarification
6 again on 5.4, and that is that we believe this issue should
7 also include a consideration of whether the allocation to
8 the unregulated business units is appropriate, as well.

9 We're just concerned that the issue, as it is
10 currently worded, applies, that only allocation to the
11 regulated hydroelectric and nuclear facilities is at issue.
12 We believe that would also require consideration of the
13 costs allocated to the unregulated units. But, again, we
14 don't propose any change in the wording, just a
15 clarification on the scope.

16 MR. KAISER: Any objection to that, Mr. Penny?

17 **FURTHER SUBMISSIONS BY MR. PENNY:**

18 MR. PENNY: Well, I do have an issue with that, yes,
19 Mr. Chairman. There are really two points, I guess.

20 First of all, of course the OEB's jurisdiction is with
21 respect to payment amounts for the prescribed assets, and
22 the OEB has no jurisdiction over the non-prescribed assets.

23 So what corporate costs are allocated to non-
24 prescribed assets, if I can put it that way, is both, in my
25 submission, irrelevant to payment amounts for the
26 prescribed assets, and outside the OEB's jurisdiction. So
27 it does not seem to me appropriate that the allocation to
28 unregulated assets is either relevant or appropriate.

1 The other point I would make, though, which is perhaps
2 a more practical point, we have put in evidence of what the
3 total is and we, of course, have put in evidence on what's
4 been allocated to the regulated assets or the prescribed
5 assets.

6 So you already know what's being allocated to the non-
7 regulated assets. So in a way, it is a bit of an odd
8 request, in my submission, because if it's just to pull
9 numbers out of a hat, if it is eighty-twenty, then we know
10 that 80 goes to one and 20 goes to the other.

11 MR. KAISER: Mr. DeVellis, do you understand that?
12 You're basically saying it is the flip side of the coin, so
13 both sides are there.

14 **FURTHER SUBMISSIONS BY MR. DEVELLIS:**

15 MR. DeVELLIS: Fine. That's what I was saying. So I
16 am not sure I understand the objection, because so far as
17 there is a total pool of costs and a portion of those are
18 allocated to the regulated entities, then that would be --
19 form a part of the prescribed payments. But that would
20 also mean that you would have to look at what is not --
21 what is being allocated and what is not being allocated to
22 the non-regulated entities.

23 So I'm not sure I understand the objection to what
24 we're proposing.

25 MR. KAISER: Well, as I understand Mr. Penny, he's
26 saying that obviously it is an allocation to regulated and
27 unregulated or prescribed and non-prescribed, but he's
28 raising a question as to the jurisdiction of the Board to

1 specifically include an enquiry into the unregulated.

2 MR. DeVELLIS: Well, I mean, the analogy that I can
3 think of is with respect to the corporate cost allocation
4 with Enbridge Inc. and Enbridge Gas Distribution. Again,
5 you know, you could make your argument that the Board
6 doesn't have jurisdiction to consider the allocation to
7 Enbridge Inc., but of course if that forms the part of
8 what's being allocated to Enbridge Gas, then, yes, it does,
9 because that is necessarily a part of the enquiry.

10 MR. KAISER: All right. Thank you.

11 All right. Let's move on to 5.5. Anyone have
12 anything on that?

13 **CONTESTED ISSUE 5.5**

14 **SUBMISSIONS BY MR. DEVELLIS:**

15 MR. DeVELLIS: That's us again, Mr. Chairman.

16 Again, just a point of clarification. Ten percent of
17 OPG's fixed assets are held centrally, and they're not
18 included in the rate base for the regulated entities;
19 rather, they are charged as sort of an OM&A -- an expense
20 to the regulated entities.

21 So our concern is that the appropriateness of that
22 treatment as an expense as opposed to a part of rate base
23 be considered as part of issue 5.5.

24 MR. KAISER: Any problem with that, Mr. Penny?

25 **SUBMISSIONS BY MR. PENNY:**

26 MR. PENNY: Well, conceptually, no. It comes back to
27 the -- to our sort of principled point, if you will. We
28 see that as being included in the description, So we take

1 no issue. If someone wants to say, well, would it be
2 better off -- would it be better for customers if you
3 actually put these in rate base and got your costs that
4 way, that, it seems to me, is an open question that people
5 could pose, given the way that it is described.

6 MR. KAISER: All right. Thank you. 5.6? 5.7? 5.8?
7 5.9?

8 **CONTESTED ISSUE 5.9**

9 **SUBMISSIONS BY MR. PENNY:**

10 MR. PENNY: 5.9 was an OPG suggested wording change.
11 This has to do with purchased services, and the way that
12 the question was originally worded, it focussed only on
13 purchased services as a stand-alone issue. In other words,
14 the question was: Are the levels of OM&A purchased
15 services appropriate?

16 By "purchased services", that's effectively some form
17 of outsourcing, contract work, if you will, to landscapers
18 or to machinists or what have you.

19 The only point to -- in OPG's submission, we're not
20 objecting to an enquiry into the level of that and the cost
21 of that, but we just simply propose some wording changes to
22 make it clear that that needs to be looked at in the
23 context of the total OM&A, because, of course, if you're
24 not purchasing the machinist from a contractor, then you
25 have to -- and you needs a machinist, then you have to have
26 some other way of getting that work done, and that would
27 probably be by having employees.

28 So it seemed to us conceptually that it was not

1 appropriate to look at purchased services on a stand-alone
2 basis, because it is kind of like the pop-up game. If you
3 push it down in one place, it pops up somewhere else.

4 So our wording is designed to simply reflect that, to
5 say: Is it appropriate in the context of the full OM&A
6 budget for the regulated facilities?

7 MR. KAISER: Any objections to the proposed change in
8 wording to 5.9? All right, let's go on. 6.1, anyone have
9 anything? No?

10 6.2? 6.3? 6.4?

11 **CONTESTED ISSUE 6.4**

12 **SUBMISSIONS BY MR. PENNY:**

13 MR. PENNY: 6.4, that was also an OPG issue. I think
14 Mr. Warren perhaps alluded to this, as well, in his written
15 submission.

16 It is simply, again, not a change of substance, just a
17 clarification. The original question as posed was:

18 "Are there revenues that OPG earns from the prescribed
19 assets that should be included in the application?"

20 Of course there are, and they're all there.

21 What we take -- and they're covered under production
22 forecast, so we took this to mean other revenues. So our
23 change is to reflect the fact that there are other revenues
24 or other costs, other than those that are already included
25 in the application that should be considered.

26 MR. KAISER: Any objections to that wording?

27 All right. 6.5, anyone have anything? 7.1, Mr.
28 Penny, I think you had something.

1 **CONTESTED ISSUE 7.1**

2 **SUBMISSIONS BY MR. PENNY:**

3 MR. PENNY: Yes. I think AMPCO has an issue on this,
4 as well, but perhaps I will start. The -- because they're
5 quite different. Our suggestion is simply to drop the
6 example.

7 We accept that the method is an issue. We say the
8 amounts -- we will get to this with Mr. Rodger's point, but
9 we say the amounts are not an issue, because they're
10 prescribed by the regulation. But the method by which
11 they're flowed through into payment amounts is an issue.

12 So we accept that as an issue of substance. We,
13 frankly, didn't understand it, the example.

14 So our suggestion, based on -- again, on the principle
15 enunciated in the Hydro One Bruce-Milton case is that it is
16 unnecessary. It is kind of like in the nature of a sub-
17 issue, if you will. And we accept there may be
18 alternatives and we just propose that the example be
19 eliminated, because we found it, frankly, confusing.

20 MR. KAISER: Mr. Rodger.

21 **SUBMISSIONS BY MR. RODGER:**

22 MR. RODGER: Yes, sir. This issue, as you will see,
23 as it was presented by Board Staff, starts off by talking
24 about the amounts related to OPG's obligations to
25 decommission the nuclear plants and manage nuclear waste.
26 Then we have added the words: Are the amounts appropriate?

27 What we want to explore here is whether the amounts
28 that Mr. Penny was referring to do, in fact, fit within the

1 parameters of the box within which they must work or not.

2 So it is actually exploring those cost claims to make
3 sure they are appropriate, and also to explore the rate
4 impacts associated with what they're proposing.

5 So we see this as a basic part of this issue, and we
6 would see this as being included clearly within the scope
7 of this matter.

8 MR. KAISER: Do you object to the deleting of the
9 example? Do you think the example is necessary?

10 MR. RODGER: No. We would agree with the deletion of
11 the example, sir.

12 MR. KAISER: All right. Mr. Penny, what about Mr.
13 Rodger's "Are the amounts appropriate" addition?

14 MR. PENNY: Thank you, sir. As I understood, Mr.
15 Rodger made two points. The second, if I can take them
16 backwards, was the rate impacts. That's the point that I
17 think is covered by the Board Staff language, which we
18 don't object to, alternative recovery mechanisms is what I
19 understand he is talking about.

20 His first point on the amount, and whether the amount
21 is appropriate. As I understood it, what Mr. Rodger is
22 saying is: Does it comply with the requirements of section
23 6.2(7) and 6.2(8) of the regulation. And if that is what
24 he means then we have no issue with that. That is -- that
25 was really my point.

26 If he means, can we start from square one and say,
27 well how much should nuclear liabilities cost in a perfect
28 world and is your number the right number, then we take

1 exception to that.

2 So if in fact Mr. Rodger means: Does it fall within
3 the parameters of the regulations, then perhaps it should,
4 rather than say "is appropriate," it should say: "Do the
5 amounts fall within the parameters of the regulations?"

6 MR. KAISER: Can you live with that, Mr. Rodger?

7 MR. RODGER: That's fine, sir.

8 MR. KAISER: Thank you. 8.1.

9 **CONTESTED ISSUE 8.1**

10 **SUBMISSIONS BY MR. RODGER:**

11 MR. RODGER: Yes, sir. AMPCO, again, had some
12 suggested changes here. This is the design of payment
13 amounts. To both 8.1 and 8.2, we have added the same words
14 and those are: "What incentives to enhance efficiency are
15 appropriate?"

16 Really, there is two aspects to this addition that I
17 began to describe in exchange with Mr. Rupert earlier.
18 There is firstly the narrower question where we want to
19 explore whether OPG's proposal is the best option, whether
20 it can be improved upon. So we would like to explore that.
21 But we think there is also a broader question about
22 incentives for OPG generally.

23 We would note that the existing rates provide
24 directionally appropriate incentives in a couple of
25 different ways. For example, by paying for throughput, so
26 the more production that OPG achieves, the higher the
27 payment. And secondly, by not limiting revenues from hydro
28 production over 1900 megawatts in an hour.

1 We want to be able to explore the question of the
2 incentive value of the payment amounts overall, that is:
3 Do the payment amounts, taken together, provide
4 directionally appropriate incentives to maximize output and
5 to offer energy into the market when the energy is most
6 needed or most highly valued?

7 So the question becomes whether the basic payment
8 amounts provide sufficient incentives to OPG, or whether
9 they need to be augmented by special incentives such as
10 higher rates on higher levels of production, as an example.

11 So we think this question and addition to the issue is
12 valid, because we are concerned about OPG's proposal, for
13 example, for certain compensation for nuclear, even when it
14 does not produce. We think there is certain threats that
15 could diminish incentives already in place. So that is why
16 we're seeking to expand and clarify these issues to deal
17 with these topics.

18 That's parts of the link, sir, Mr. Rupert, I tried to
19 explain earlier about the benchmarking on production as
20 well.

21 MR. RUPERT: Could I ask you one question?

22 When I read your submission first and the word
23 "efficiency," I didn't have in mind at all the notion of
24 incentives to increase output in certain hours or maximize
25 output or whatever. I read it more as a cost-driven thing.
26 So you're saying efficiency means, is broader than just
27 lowering production costs or OM&A. It also goes to the
28 quantity of output?

1 MR. RODGER: That's correct.

2 MR. KAISER: Mr. Penny.

3 MR. PENNY: Yes, thank you, sir.

4 **SUBMISSIONS BY MR. PENNY:**

5 MR. PENNY: This is again a circumstance where we
6 don't take issue with the substance of the enquiry, but we
7 think, in fact, that Mr. Rodger may be doing himself
8 actually a disservice by putting down these words, because
9 they create the kind of ambiguities that just arose in the
10 exchange with Mr. Rupert.

11 We see 8.1, that the hydroelectric incentive payment
12 system that we're proposing, it is asked whether that is
13 appropriate. That seems, to us, to include enquiry into
14 whether there were other systems that would be more
15 appropriate or better. So we think it is covered. And
16 under 8.2, the fixed -- what we're talking about here is
17 the rate design or the payment design, I should say. And
18 that, it seems to us, to determine whether that is
19 appropriate, could involve enquiry into whether other
20 payment amount designs would be more appropriate or would
21 be better and respond to the kinds of issues that Mr.
22 Rodger has raised. So we don't take issue with the
23 substance, but just don't see it as a necessary change to
24 the issues list.

25 MR. KAISER: Mr. Rodger, given that expression of the
26 understanding, can you live with the existing wording?

27 MR. RODGER: Yes. Given Mr. Penny's clarification,
28 that is fine, sir.

1 MR. KAISER: All right. Thank you.

2 9.1. 9.2? Mr. Penny.

3 **CONTESTED ISSUE 8.2**

4 **SUBMISSIONS BY MR. PENNY:**

5 MR. PENNY: Thank you, Mr. Chair.

6 This point is a technical point, if you will. We are
7 simply making -- it starts out by talking about changes to
8 electricity production associated with these sections.

9 We simply make the point that of the five subsections
10 of 5.1, A through E, that only 1(a) and 1(e) relate to
11 changes in electricity production. There actually aren't
12 any amounts in B and D, and sub C is revenues for ancillary
13 services, but that isn't actually related to electricity
14 production. We don't have any issue with that being on the
15 list, but if it is, it doesn't relate to electricity
16 production. So if it is appropriate to include it, it's
17 more appropriate to include it under 9.1. This is just
18 for-accuracy issue.

19 MR. KAISER: All right.

20 MR. PENNY: So we have proposed deleting B, C and D.

21 MR. KAISER: Any objection to those changes? All
22 right. Thank you.

23 9.3, anyone have anything on that? 9.4? 9.5?

24 **CONTESTED ISSUE 9.6**

25 **SUBMISSIONS BY MR. PENNY**

26 MR. PENNY: 9.5 (sic) is simply, perhaps, a slightly
27 different iteration of the point that I made with respect
28 to the earlier discussion on nuclear waste liabilities.

1 It is simply to incorporate, by reference, the
2 provisions of the regulation, so that we are clear that
3 some of these amounts are specifically governed by
4 regulation and the scope of the enquiry is whether they fit
5 within the parameters of the regulation.

6 MR. KAISER: All right. That is 9.6, I think, isn't
7 it?

8 MR. PENNY: Oh, yes. I'm sorry, did you say 9.5? I'm
9 jumping ahead, I'm sorry.

10 MR. KAISER: No problem with the 9.5, I take it?

11 MR. PENNY: No.

12 MR. KAISER: All right. Any objection to the proposed
13 amendments to 9.6? All right. Thank you.

14 9.7, anyone have anything on that? Okay.

15 10.1, anyone? 10.2?

16 MR. PENNY: Mr. Chairman, there is an OPG issue on
17 10.2.

18 MR. KAISER: Yes.

19 **CONTESTED ISSUE 10.2**

20 **SUBMISSIONS BY MR. PENNY:**

21 MR. PENNY: This is, again, more of a to be
22 technically accurate point. The issue of the tax loss
23 carry-forwards is done on a deemed basis, on a corporate.
24 And our point is to take out the reference to "corporate
25 tax loss carry-forwards," because there actually are not
26 corporate tax loss carry-forwards anymore. They were
27 actually used. But what we have done is, because we
28 understood that the regulated assets were to be treated on

1 a stand-alone basis, we have notionally preserved those tax
2 loss carry-forwards that were attributable to the regulated
3 business, and even though they don't "corporately" actually
4 exist anymore, we are giving the customers of the benefits
5 of those tax loss carry forwards. This is simply
6 delimitate to the regulated business because it is not
7 actually a corporate issue, it is an issue that relates to
8 the prescribed assets.

9 MR. KAISER: Any objections to the OPG's proposed
10 amendments to 10.2? Thank you.

11 10.3, Mr. Penny.

12 **CONTESTED ISSUE 10.3**

13 **SUBMISSIONS BY MR. PENNY**

14 MR. PENNY: Yes. This is, again, just a purely
15 technical, if you will, for accuracy and clarity, that we
16 don't view our method for removing Q1 as being prorating.
17 That isn't actually what it is, but we agree that the issue
18 is a relevant issue. So we have just proposed that the
19 question read:

20 Are OPG's methods for removing Q1 2008 cost revenues
21 and production appropriate?

22 MR. KAISER: Any objections to the proposed amendments
23 to 10.3? Thank you.

24 **CONTESTED ISSUE 6.5**

25 **SUBMISSIONS BY MR. PENNY:**

26 MR. PENNY: Oh, Mr. Chairman. There was an issue that
27 I remembered - I had a note here - that Mr. Warren had
28 raised about the Bruce costs and revenues.

1 I think Mr. Warren's point, to be fair to him, was
2 that there was a category - we went over it - for Bruce
3 revenues, I think, but perhaps not both. No, sorry. It
4 was costs. I think it was 6.5.

5 MS. CHAPLIN: I think he suggested it should be a
6 separate category.

7 MR. PENNY: Because it is not just revenues. My only
8 point is that, I think -- I mean, it doesn't matter to us
9 where you put it. I understand Mr. Warren's point that it
10 is both costs and revenues, and I think that is reflected
11 in the question.

12 It is actually our intention to deal with that in the
13 hearing as one piece, because we will have a panel that
14 deals with both costs and revenues. But in fairness to Mr.
15 Warren, I thought I should raise that.

16 MR. KAISER: All right. It sounds like you agree with
17 him.

18 MR. PENNY: Well, we agree with the substance of the
19 issue. I'm not sure it is necessary to put it somewhere
20 else, so long as we all agree that it is both costs and
21 revenues.

22 MR. KAISER: All right.

23 **OEB FILING REQUIREMENTS**

24 **SUBMISSIONS BY MR. RODGER:**

25 MR. RODGER: Mr. Chairman, there was one other matter.

26 In AMPCO's submission last Friday, it identified a new
27 issue which you labelled as 1.0 called OEB filing
28 requirements. It doesn't necessarily have to appear as the

1 very first issue. But AMPCO proposes the following
2 wording:

3 Does the application meet the requirements set out in
4 the Board's filing guidelines?

5 AMPCO wanted to have this as a distinct, separate
6 issue, given the importance that AMPCO places on the
7 guidelines.

8 These, of course, are the Board's guidelines dated
9 July 27th, 2007.

10 I don't think you have to turn it up, but if you look
11 at the introduction, right at the very outset there is a
12 bolded first paragraph in the Board's guidelines. The
13 Board states that:

14 "The Board expects that OPG will comply with
15 these filing guidelines."

16 So we would like to explore in this proceeding whether
17 in fact OPG has complied or not, whether they have met the
18 Board's expectations or not. If they have not met them, we
19 would want to clearly understand why not or why couldn't
20 OPG meet all of the requirements, and expect they would
21 have very good reasons for doing so.

22 This is a primary issue, in AMPCO's view, because of
23 the significant process and time and resources that went
24 into developing these filing guidelines that went well back
25 into 2006.

26 So we believe that this is an appropriate issue to be
27 added to the list, sir.

28 MR. KAISER: What is it that you say is deficient in

1 their filing?

2 MR. RODGER: Well, we are still going through the
3 application. You can imagine it is quite a complicated
4 task, but I can give you a couple of examples of where we
5 have been pursuing.

6 For example, on page 8 of the guidelines, it talks
7 about, with respect to prescribed nuclear generation
8 assets, the Board will solicit input on the question of
9 maximizing the efficient use of those assets, maximizing
10 availability and peak demand periods.

11 Our concern is that the proposed nuclear fixed
12 variable payment structure provides the opposite incentive
13 to the direction the Board was requiring.

14 Also, there is -- on page 9, you will see that the
15 expectation is that there are certain years of historical
16 data that is required, and in some cases we don't have a
17 complete set of that historical data. There is only one
18 year rather than three years or two years.

19 So we haven't gone through the whole application, but
20 we want to explore that, and those are two examples.

21 MR. KAISER: It seems to me, Mr. Rodger, this isn't a
22 question of whether this is an issue in the hearing. It is
23 a question of whether the application is complete, whether
24 we should be hearing the application, which is really a
25 preliminary motion. I mean, if you are going to raise that
26 motion that this application is not compliant, it seems to
27 me we need to have some specifics so we can make a judgment
28 early on. Let's suppose we get on with the hearing and you

1 bring up some deficiency. What are we supposed to do with
2 it then?

3 MR. RODGER: Well, there may be a direction from the
4 Board that OPG produce it, produce that missing
5 information.

6 Certainly today we're not at the stage of scanning the
7 entire application to check this, but I wanted to give you
8 a flavour of what we have been doing as we have been
9 reviewing the application.

10 MS. CHAPLIN: Mr. Rodger, is it a stand-alone issue or
11 is it an issue that just comes up in each of the individual
12 issues as to whether or not the evidence is sufficient or
13 whether they should be directed to provide more, or whether
14 the Board should render its decision based on what they
15 filed, which may not be adequate to support the conclusion
16 that they're seeking?

17 MR. RODGER: I think it does run through the entire
18 case, but I think given the history and background of this,
19 we thought it was important to state it up front.

20 MR. KAISER: You're not asking us to make some kind of
21 ruling that the application is incomplete and we shouldn't
22 hear it?

23 MR. RODGER: No. No. We just want to be able --

24 MR. KAISER: You just want to have the ability to
25 raise the question of deficiency of evidence, should that
26 pop up?

27 MR. RODGER: Exactly, through interrogatories and
28 cross-examination.

1 MS. NOWINA: Mr. Penny.

2 SUBMISSIONS BY MR. PENNY:

3 MR. PENNY: Well, Board members, Mr. Chair -- and you
4 and other Board Members are on to my point here. The
5 question is: Is the application compliant with the
6 guidelines? I say to what end? I mean, if it is a
7 metaphysical question, then it is of no moment. It doesn't
8 matter. It shouldn't have to land on the ground somewhere.

9 In my submission, there are a number of options. It
10 doesn't need to be and shouldn't be an issue in the
11 hearing, because whether or not OPG is compliant as a
12 metaphysical question doesn't make any difference.

13 The issue is: Does the Board have adequate
14 information to decide the issues? Do the intervenors have
15 adequate information to respond to the proposals and to
16 explore the other proposals that are filed within the
17 framework of the issues?

18 So if Mr. Rodger knows today or -- if his client knows
19 today it is deficient in some respect, then it is
20 incumbent, it seems to me, on them to bring a motion to
21 give the information they feel they need. They can ask
22 interrogatories on areas that they find are deficient, and
23 if OPG doesn't have the information or doesn't want to
24 provide it, then we will explain why or what the story is,
25 and there is the usual process for resolving those issues.

26 So it seems to me very inappropriate to be dealing
27 with this in the air. We should be dealing with it in the
28 context of whether the -- whether adequate information is

1 available to decide the issues that need to be decided and
2 to do the job that the Board has been directed by the
3 legislation to do.

4 MR. KAISER: All right. Let's proceed on that basis,
5 Mr. Rodger. Anything else, gentlemen, ladies? Mr. Faye.

6 **SUBMISSIONS BY MR. FAYE:**

7 MR. FAYE: One quick item, and it might be a little
8 repetitive, Mr. Chair.

9 The applicant has put in a number of arguments that
10 pertain to the Bruce-Milton hearing. One of the main
11 points made in that decision was that the issues list
12 should be broadly construed, and that goes to not having to
13 define all of the sub-issues. That's been addressed in
14 some of the comments that have been made here today.

15 Energy Probe would just like to reiterate and have it
16 on the record that issues list will be broadly construed
17 and sub-issues that are not specifically identified would
18 be pursuable.

19 MR. KAISER: Is that satisfactory, Mr. Penny?

20 MR. PENNY: Well, yes, to the extent that Mr. Faye has
21 described it, I entirely agree with that.

22 It does seem to me somewhat inappropriate for the
23 Board to be making pronouncements in the air at this stage
24 about how broad or how narrow the issues will be construed.
25 But in the sense that those issues -- whether you think
26 that a particular enquiry at a particular point in time in
27 the hearing is going to help you or not, that shouldn't be
28 decided today. That should be decided at the time.

1 But I do agree that to the extent that Mr. Faye has
2 said -- on this sub-issue issue, I do entirely agree with
3 him. I just don't think it is necessary for you to be
4 making pronouncements at this point in time as to whether
5 you will take a narrow or broad view of the issues list.

6 MR. RUPERT: I take it, Mr. Penny, you don't view the
7 ownership of the company as a sub-issue under ROE? Your
8 submissions earlier is, I think, that the identity of the
9 shareholder and this entity should not be open for
10 discussion at all in any of the aspects of this hearing?

11 MR. PENNY: That's right. Let me respond this way,
12 Mr. Rupert, that if my friend had not raised it now but
13 wanted to pursue it at the hearing or in the interrogatory
14 process, we would be taking the same position that we're
15 taking now, that it is not relevant or -- and then we would
16 be resolving it then instead of today.

17 It is the same issue, just a question of when it comes
18 up. But, yes, we think -- I mean, obviously if the Board
19 wants to engage in this enquiry, then we will engage in
20 that enquiry. Our submission is simply that we have done
21 that before. There's a well-established body of precedent
22 and it's not necessary.

23 MR. KAISER: Thank you. Anything further, gentlemen,
24 ladies? Ms. Campbell, anything?

25 MS. CAMPBELL: Nothing. Thank you, Mr. Chair.

26 MR. KAISER: All right. 9:30 tomorrow, we will deal
27 with the interim rates matter.

28 --- Whereupon the hearing adjourned at 2:15 p.m.