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BY EMAIL and RESS

September 23, 2011
Our File No. 20110286

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
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Attn: Kirsten Walli, Board Secretary

Dear Ms. Walli:

Re: EB-2011-0286 – OPG 2013-2014 Filing Requirements

We are counsel for the School Energy Coalition. Pursuant to the Board's letter of September 8, 2011, this letter represents SEC's submissions with respect to the Prioritization of Issues and the proposed amendments to the Filing Guidelines.

Prioritization of Issues

It is submitted that for the purposes of prioritizing issues, there are three situations that need to be considered:

1. ***Issues that are on the priority list from the outset.*** Certain matters, because of their dollar value, or the principles involved, can be identified as high priority issues before the evidence is filed. The nuclear production forecast, for example, is too important to be anything other than a high priority issue.

2. ***Issues that are likely to be high priority, depending on the evidence.*** The Board has already made clear that compensation levels are an important issue in this proceeding. It is possible that some, even all, of the parties may conclude

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having seen the evidence that less focus is required on compensation levels, for example if OPG has made major changes prior to the Application being filed. Similarly, OPG has been ordered to file a depreciation study. Depreciation is a big number, and it is complicated by the change in accounting rules, so it is likely a priority issue. It remains possible, however, that parties will not have any concerns with the depreciation evidence once they see it.

3. ***Issues that are likely not high priority, depending on the evidence.*** A good example might be return on equity. If the Applicant proposes to adopt the Board's normal guidelines, consistent with the previous payment amounts cases, then absent any other party seeking to make it a key issue in the proceeding, it is likely to be a lower priority.

What is clear from the above categorization is that, while there are circumstances in which high priority issues can be identified prior to the filing and testing of the evidence, there are no circumstances in which lower priority issues can be identified that early. As much as parties may anticipate that certain issues may be non-controversial, no-one can say for sure until the evidence has been filed and reviewed, and any questions to clarify that evidence asked and answered.

This would appear to us to rule out the ***Early Prioritization*** option as it is currently proposed. That option would, in our view, do two things that are inconsistent with the Board's practices and likely its statutory mandate:

- Issues would be identified in respect of which parties would be prohibited from asking questions or seeking to understand them better.

- The Board would order recovery from ratepayers of a revenue requirement based at least in part on the untested evidence of the Applicant alone.

Aside from the obvious legal issues associated with these results, it would be a startling break from the Board's fundamental approach to ratemaking. The Board does not simply accept utility evidence without a critical review, and the Board does not prevent ratepayers and other stakeholders from testing utility evidence.

The ***Pre-Hearing Prioritization*** option appears to have more promise. If parties feel that any issue needs to be pursued, they have the opportunity to ask interrogatories and follow up at a technical conference. At that point, the foundation for any dispute about issues is usually pretty clear. The only question remaining is the extent to which the specific issue needs sworn oral testimony in order to have a full review.

In our view, this can be discussed at ADR, but it is not really in the nature of settlement, so some of the rules relating to a settlement conference may not be appropriate. What

may be better, it is submitted, is a ***case management conference***, after ADR, dealing with all issues that have not been settled.

In our submission, it is reasonable for the Board to ask all parties, after ADR, to state in writing which unsettled issues they believe they need to pursue through cross-examination in a hearing. Once all such statements have been filed, the Applicant and the parties can attend a case management conference (much like an issues conference) to work out what issues need witnesses, and the order and structure of the hearing. If the parties fail to agree on any part of these arrangements, then a case management day (much like an issues day), can be convened so that the Board can decide on the efficient management of the hearing.

We have two other comments in this area.

First, in our view the Board should make clear that, even if an issue is not scheduled for the oral hearing, it can be added if a party believes, on reasonable grounds, that it should be added. This is more than just restating the Board's residual power to control its own process. We are proposing that any relegation of an issue to secondary status always be provisional. As a matter of principle the Board should order reasonable testing of the evidence with respect to an issue, if requested by a party, unless it is clearly unnecessary.

Second, the suggestion has been made that secondary issues, if included in the hearing, be scheduled for the end. In our view a hearing has a logical flow, and the subjects can be fit together in ways that are more understandable, or less. That flow does not depend on the importance of individual issues, but rather on their connections. The case management conference should deal with this, but if not we believe that scheduling should be based on ease of understanding, not importance of issues.

Filing Guidelines

SEC generally agrees that the changes proposed for the Filing Guidelines are appropriate. In almost every case, the changes are responsive to the experience of the Board and the parties in the first two payment amounts proceedings, and to changes in external factors that will impact the Application.

We therefore have only the following comments:

1. Section 2.1. The requirement to file a Revenue Requirement Work Form, and other pre-stipulated Excel spreadsheets, has been added. In general SEC agrees with those requirements. However, it may also be true that OPG has a better way of presenting the same information. If that is the case, for this proceeding it is submitted that OPG should file this data in the format required by the Guidelines,

including the RRWF, and in its preferred format. The Board will see which format is more useful, and in the next proceeding can amend the Guidelines accordingly. In our view it is appropriate for the Board to require information in a standardized, even simplified, format. If OPG wishes to file in a different format, it should be allowed to do so, but in addition, not instead of, the Board's format.

2. Section 2.1.1. SEC is very concerned about the impact of changing accounting rules on the upcoming Application. Assuming OPG is converting to IFRS, and thus is filing in MIFRS for this payment amounts proceeding, the impacts could be substantial, and the evidence could be very confusing. The Guidelines require filing 2011 information both ways, and identifying and detailing for all of the Application the areas in which MIFRS has a material impact. In addition, in our view it is very important that tables and data that show year by year information show that data in CGAAP up to 2011, then an additional column for the 2011 information in MIFRS, then the 2012 through 2014 information in MIFRS. In this way, the impact of the accounting change is transparent. This would include, for example, all OM&A and capital actual and forecast tables. It would also require the Applicant to restate 2011 and 2012 Board-approved data in MIFRS so that comparisons of actuals to Board-approved are meaningful. It is of considerable importance, in our view, that the Applicant not adopt the practice that we have seen in the EB-2011-0054 Ottawa proceeding of filing all in CGAAP, with a separate section providing additional, MIFRS-based information. While that may work in the Ottawa case, the OPG case is far too complex to attempt the same shortcut.

3. Section 2.1.1. We continue to believe that the use of three historic, one bridge, and two test years is appropriate.

4. Section 2.2.1. SEC does not believe it is useful to ask OPG to provide a draft issues list. Where, as here, the issues themselves can be both complex and controversial, it is in our view more appropriate to ask Board Staff to prepare the first draft issues list that commences the issues discussion. This will make the starting point more neutral, and lead to a more productive discussion not only of what issues should be in or out, but also the scope of each issue.

5. Section 2.2.3. The inclusion of business plans continues to be an important component of the Application. We have three comments on this component:

    a) It is important to make clear that the business plans being sought are the actual business plans being used by the Applicant in its business. They should not be "business plans" especially prepared for the rate case. Then they would just be the Application in a different format. The Applicant has to have a business plan or plans in order to run its business. They will typically have been approved by its Board of Directors, and form the foundation for its

planning and operations. That is the document or documents that should be filed.

b) In addition to the most current business plan or plans, in our submission the Applicant should file all previous business plans that include any part of the test period. In the past the changes in how the Applicant has forecast its spending for the test period have been unusually instructive in understanding how the Applicant was approaching its business.

c) Business plans can include extensive information relative to the Applicant's unregulated businesses. While some of that information can be placed on the public record, most of it is legitimately confidential, and this has been a problem in the past. In order to ensure that the business plans are as useful to the Board as possible, the Applicant should be encouraged to file redacted versions that are as complete and understandable as possible. As we saw in the last proceeding, where the redactions are carefully done, it is often possible to use business plans in their redacted form, simplifying the proceeding and making it more transparent. It may also be possible for some or most parties to rely solely on non-confidential information.

6. Section 2.3. A separate section dealing with asset retirement costs is added. In our submission, the Guidelines should specify that this section deal with all differences between CGAAP and MIFRS, and should restate past ARO evidence using MIFRS so that the new information is more understandable.

7. Section 2.4.3. It is not clear whether this provision is requiring OPG to justify with independent evidence the ROE they are requesting, or whether the option remains of relying on the Board's Cost of Capital report.

8. Section 2.5. While SEC agrees that increasing the threshold for capital project reporting from $10 million is appropriate, moving to $20 million seems to be a large step. It is suggested that $15 million is a better response, which would still result in a significant drop in the number of projects for which detailed reporting is required. The same is true of the threshold for the variance analysis.

9. Section 2.7.1(a). If any of the internal documents relating to operating costs (for example, business plans) continue to use headcount rather than FTEs, then in our submission forward information using headcount, sufficient to understand the past data, should be filed in addition to the FTE information.

10. Section 2.7.1 (b). The depreciation information should include an analysis of the impact on depreciation of the change from CGAAP to MIFRS. We have already

seen for more than one electricity distributor that this accounting change can have a material impact on the components of the depreciation calculation.

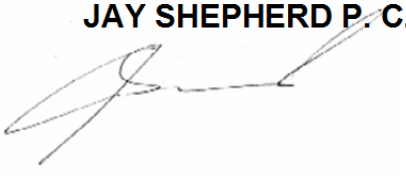
With these exceptions, the Filing Guidelines appear to us to be a good foundation for the next payment amounts Application.

Conclusion

We thank the Board for the opportunity to comment on the draft Filing Guidelines and the proposals for issue prioritization, and hope these comments are helpful. SEC would welcome the chance to participate in any further consultations and processes with respect to these issues.

All of which is respectfully submitted.

Yours very truly,
JAY SHEPHERD P. C.



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cc: Wayne McNally, SEC (email)
Interested Parties