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BY EMAIL and RESS

February 3, 2012
Our File No. 20110432

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

Dear Ms. Walli:

Re: EB-2011-0432 – OPG Request re USGAAP

We are counsel for the School Energy Coalition. Pursuant to Procedural Order #1, these are SEC's submissions with respect to the proposed procedure in this matter.

We note that we have had the benefit of seeing the submissions of Board Staff, filed earlier today, which have informed our comments below, and we have had a chance to discuss the issues with other intervenors.

In SEC's submission, the Board should not grant the Application through the limited procedure under consideration, for the following reasons:

1. **Scope.** The Board will be aware that many utilities sought a generic variance account, similar to what is being requested in this proceeding, for the many unknown impacts expected on the conversion to IFRS. The Board quite correctly concluded, after a thorough review, that a generic "impacts" account was not appropriate. Instead, the Board identified specific areas, such as PP&E transitional variances, that did need recognition in this manner, and specific exactly how that would be done. The Board's practice, of which IFRS was an example, has been to identify with as much precision as possible specific uncertainties that require an adjustment mechanism, and then tailor the adjustment mechanism to what is actually required. In this case, what is under consideration would take a different approach, casting in our view an unreasonably broad net.



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2. **Timing.** The issue of an “impacts” account has been raised in the Union and Enbridge cases, and it is clear from the evidence in those cases that there is no need, early in 2012, for a variance account for regulatory purposes. The need for an account, if at all, will arise the first time that rates are set under USGAAP. In our submission, as a general rule the Board should not be approving variance accounts unless there is a regulatory purpose for the account. The Applicant points to no potential regulatory impact at this time, i.e. the payment amounts currently in place do not appear to be in need of any changes that have been identified.
3. **Practicality.** The third condition set out in the PO is “The manner in which OPG will track and record items in the deferral account will be determined in the next payment amounts application”. This demonstrates the practical problem with the approach under consideration. Unless the Board gives direction to OPG as to how to make entries to the account, there is no reason to have the account. They can’t do anything with it. The time to establish the account, if it turns out to be necessary, is in the payment amounts proceeding, when both its establishment and how it should be used can be decided together. Establishing an account without determining how it will be used does not serve any useful purpose.
4. **Open-Endedness.** This is somewhat different from scope. The Board has some information on how Hydro One, Union, and Enbridge propose to use accounts of this nature, i.e. what kinds of variances are expected, and how a variance account would be an appropriate method of dealing with those variances. There is no reason to think that the same types of variances are likely to arise in the case of OPG. OPG is a generation company, and there are many accounting issues of considerable importance to OPG that may have little importance to distributors and transmitters. Consider the accounting for nuclear decommissioning and spent fuel disposal. USGAAP is likely to have rules associated with this multi-billion dollar area of cost, but the Board also has considered this at some length. Is it appropriate to give OPG blanket authority to record the difference between the current Board-mandated regulatory approach, and the USGAAP financial accounting approach, without knowing what that difference might be, and why it exists? And, if so, what is the purpose of giving such an open-ended ability? If the Board will in any case determine the regulatory approach it accepts during the payment amounts application, who is affected by the variance account? Is the purpose only to influence the financial statements of OPG? If so, is this an appropriate role for the Board?
5. **Precedent Value.** SEC’s biggest concern is that the approach under consideration would be a major change in the Board’s fundamental approach to establishing variance accounts. To date, the Board has been very clear that, if a utility seeks a variance account, it must provide clear evidence of the future uncertainty that is being addressed, and why a variance account is the appropriate regulatory response to that uncertainty. What is proposed here, instead, is that any utility could assert a general uncertainty, and without any evidentiary support receive approval for a deferral or variance account. The Board would keep its options open by conditions, true, but a deferral or variance account would in effect be granted just for the asking. This direction, if taken, would in our submission be a very negative one. The Board has assiduously guarded its discretion to create deferral and variance accounts, so that the tool is used only when necessary as supported by clear



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evidence. What is being proposed in this case would turn that on its ear, and there is no apparent reason why that would be a good idea.

For the above reasons, it is submitted that the Board should either defer consideration of this Application until the Applicant is in a position to provide supporting evidence and analysis (to be tested through interrogatories or other discovery in the normal course), or invite the Applicant to merge this Application with its next payment amounts Application, so that the evidentiary basis is provided along with the request for the account.

All of which is respectfully submitted.

Yours very truly,

JAY SHEPHERD P. C.

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cc: Wayne McNally, SEC (email)
Interested Parties