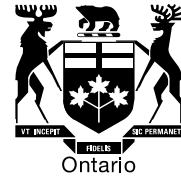


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BY E-MAIL

April 13, 2012

To: Parties to EB-2011-0286

**Re: Ontario Power Generation Inc.
2013-2014 Payment Amounts (EB-2012-0002)
Niagara Tunnel Project Prudence Review**

Introduction

Section 78.1 of the *Ontario Energy Board Act, 1998* (the “Act”) authorizes the Ontario Energy Board (the “Board”) to set payments to be made to Ontario Power Generation (“OPG”) with respect to the output of the prescribed generation facilities. Ontario Regulation 53/05, *Payments Under Section 78.1 of the Act Regulation* (O. Reg. 53/05), states that the “Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act.”

The Board issued *Filing Guidelines for Ontario Power Generation Inc. in Setting Payment Amounts for Prescribed Generation Facilities* (the “Filing Guidelines”) on November 11, 2011. The Filing Guidelines set out the information that the Board expects OPG to file for purposes of the setting of payment amounts for 2013-2014 for certain of OPG’s generation assets under section 78.1 of the Act.

On March 12, 2012, OPG filed correspondence with the Board seeking the Board’s concurrence with OPG’s proposal to file a separate application in 2013 to review the reasonableness of the costs associated with the Niagara Tunnel Project (“NTP”). OPG stated that the rate base impact of the NTP is standalone and severable from the balance of the payment amounts application. OPG anticipates recovery of NTP costs via a rate rider, and stated that the overall ratepayer impact as determined in a separate

proceeding will be the same as it would be if the NTP is considered as part of the 2013-2014 payment amounts application.

On March 26, 2012, the Board invited comments on OPG's NTP proposal from parties to the 2013-2014 Filing Guidelines consultation, EB-2011-0286. In particular, the Board sought an understanding of whether any party is materially affected in an adverse way, or whether the 2013-2014 payment amounts proceeding is adversely affected by deferring the review of the NTP by one year.

Comments

Comments were filed by Board staff, the Power Workers' Union ("PWU"), Energy Probe Research Foundation ("Energy Probe"), School Energy Coalition ("SEC"), Consumers Council of Canada ("CCC"), Canadian Manufacturers & Exporters ("CME") and the Association of Major Power Consumers in Ontario ("AMPCO"). None of the parties indicated that they would be affected in an adverse way by deferring the review of the NTP by one year.

No parties objected to hearing the NTP separately from the 2013-2014 payment amounts application. The PWU and Energy Probe supported OPG's proposal as described in the correspondence of March 12, 2012. The other parties saw no harm in deferring the review of NTP by one year and acknowledged the resourcing benefits, but proposed an alternative to a separate and discreet application for the review of the NTP and/or sought additional information. OPG filed its response on April 10, 2012.

Alternative to a Separate Proceeding

Board staff suggested that an alternative to a separate NTP proceeding is a phased approach. Phase 1 would deal with the "all but NTP" and Phase 2 would address the NTP. The phased approach could require OPG's payment amounts to be set on an interim basis pending the outcome of Phase 2. CCC and AMPCO submitted that the phased approach has merits and supported the approach identified by Board staff. CME did not express a preference for a separate proceeding or a phased approach.

SEC commented that the phased approach assists with consistency as the same panel would hear both phases. SEC also noted that phasing the proceeding is not new to the Board. In the view of SEC it does not appear to be necessary for the Board to declare the payment amounts interim as the NTP is not expected to affect 2013 payment amounts, so the Board should be able to set 2013 payment amounts on a final basis.

OPG asked the Board to reject the phased approach as a separate NTP proceeding would promote regulatory efficiency and certainty. A separate proceeding would be unencumbered by the other issues of the 2013-2014 payment amounts application. OPG expressed concern that, in a phased proceeding, parties would be free to argue that issues which they believe are NTP related should be reconsidered. OPG asserted that interim rates are inherently uncertain. In terms of transparency, it is OPG's view that a rate rider clearly presents NTP costs and is more transparent than blending the costs with others.

With respect to the same Board panel for both phases, OPG stated that separate proceedings for the 2013-2014 payment amounts and NTP would increase the Board's flexibility because the Board could choose a different panel or choose the same panel.

Additional Information

Board staff questioned whether the review of surplus baseload generation ("SBG") and the hydroelectric incentive mechanism ("HIM") would be effectively examined in the 2013-2014 payment amounts proceeding in the absence of NTP evidence. Clarification was also sought on the cost of capital parameters that would be applied to the NTP.

In its response, OPG stated that it will discuss any potential interactions between the NTP coming into service, and SBG and HIM as part of the evidence in the payment amounts application. OPG also stated that the cost of capital established in the payment amounts proceeding would be an input in deciding the NTP rate rider, and there would be no need or opportunity to revisit cost of capital.

CCC urged the Board to require OPG to file, as part of its evidence in the payment amounts proceeding, an impact statement setting out the impact of the NTP on the overall revenue requirement and payment amounts. CME filed similar comments, stating that the information will enable the Board to properly assess the total price increase facing consumers over the test period.

OPG replied that it will "include in the Payment Amounts application a statement showing the impacts on the revenue requirement and payment amounts of the currently budgeted amount of NTP capital costs (\$1,600 M) based on the planned in-service date of December 2013 and forecast incremental production in 2014."

SEC Comments on Legal Test, Jurisdiction and Precedent

SEC raised the issue of different legal tests to apply to past expenditures versus future expenditures. SEC submitted that none of the NTP expenditures after 2007, if they would have been considered unreasonable costs, should be approved solely because they are past expenditures. OPG replied that the NTP commenced before OPG was regulated by the Board, and that the Board in both prior payment amounts decisions has indicated that the review will take place when NTP enters rate base. OPG also referred to section 6(2)4 of O. Reg. 53/05 which states that for amounts in excess of those approved by the OPG Board prior to OEB regulation, the Board shall ensure recovery, “if the Board is satisfied that the costs were prudently incurred....”

In SEC’s view, the Board has jurisdiction to establish payment amounts, but does not have jurisdiction to consider an application for recovery of the costs of a specific generation project. OPG’s response included reference to the Act and O. Reg. 53/05 to support its position that the Board has jurisdiction to consider NTP separately. Section 78.1(4) of the Act specifies what “may” be included in a Board order, and section 6(1) of O. Reg. 53/05 specifies that the “Board may establish the form, methodology, assumptions and calculations used in making an order that determines payment amounts for the purpose of section 78.1 of the Act.”

SEC noted that it would, “be a dangerous precedent if utilities could routinely separate aspects of their spending program for regulatory convenience.” OPG responded that the Board has never considered a project of the scale, scope or complexity of NTP. It is unrealistic to consider that a dedicated proceeding to review the NTP could serve as a precedent.

Board Findings

The Board agrees with OPG and the parties that, given the scale and complexity of the NTP, it is appropriate for the Board to consider the NTP separate from the rest of the 2013-2014 payment amounts application.

The Board has determined that a phased approach is appropriate. The Board will review all aspects of the 2013-2014 payment amounts application excluding the NTP in Phase 1. The expected outcome of Phase 1 will be a final 2013-2014 nuclear payment amount, a final 2013 hydroelectric payment amount and an interim 2014 hydroelectric payment amount, pending the outcome of Phase 2.

The review of the NTP shall be conducted as Phase 2 of the payment amounts proceeding. OPG has indicated that the NTP evidence will be ready for filing with the Board in the spring of 2013. Issues relevant to setting both nuclear and non-NTP hydroelectric payment amounts will not be revisited in Phase 2, unless it becomes apparent that NTP is not severable and adjustments need to be made to the 2014 hydroelectric interim payments.

The Board notes that the phased approach listed above will result in different hydroelectric payment amounts for the year 2013 and the year 2014, and that this is a departure from the previous cost of service proceedings in which the outcome was a blended two year payment amount. However, the Board finds that the approach provides sufficient certainty to OPG with respect to 2013 payment amounts and to all parties with respect to the scope of Phase 2. The approach also provides the Board with a means to review 2014 hydroelectric payment amounts to the extent that the Board finds that the NTP is not severable.

The Board has reviewed the comments and the response from OPG regarding additional information. The Board finds that OPG has adequately addressed the concerns of parties regarding the filing of additional information related to NTP in the 2013-2014 payment amounts application. The information filed in Phase 1 on the impact of NTP on the overall revenue requirement and payment amounts shall be filed solely for the purpose of understanding what the impacts may be in 2014. The information will be for illustrative purposes and is not to be the subject of in-depth scrutiny during Phase 1.

With respect to SEC's concerns regarding the tests for prudence and rate base, the Board will be guided by the previous OPG payment amount decisions and the provisions established in O. Reg. 53/05. The Board has determined that a phased approach is appropriate and finds that there is therefore no need to respond to SEC's concerns regarding jurisdiction and precedent.

Yours truly,

Original signed by

Kirsten Walli
Board Secretary