

ONTARIO ENERGY BOARD

IN THE MATTER OF sections 25.20 and 25.21 of the
Electricity Act, 1998;

AND IN THE MATTER OF a Submission by the Ontario
Power Authority to the Ontario Energy Board for the review
of its proposed expenditure and revenue requirements and
the fees which it proposes to charge for the year 2008.

SUPPLEMENTARY REFERENCE BOOK

**(Pollution Probe Motion for
Full and Adequate Interrogatory Responses)**

March 27, 2008

KLIPPENSTEINS
Barristers & Solicitors
160 John St., 3rd Floor
Toronto ON M5V 2E5

Murray Klippenstein
Basil Alexander
Tel: (416) 598-0288
Fax: (416) 598-9520

Counsel for Pollution Probe

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25.20 (1) The OPA may establish and impose fees and charges to recover,

- (a) the costs of doing anything the OPA is required or permitted to do under this or any other Act; and
 - (b) any other type of expenditure the recovery of which is permitted by the regulations, subject to any limitations and restrictions set out in the regulations.
- 2004, c. 23, Sched. A, s. 31 (1).

Collection

(2) The IESO shall, in accordance with the regulations, collect and pay to the OPA all fees and charges payable to the OPA. 2004, c. 23, Sched. A, s. 31 (1).

May recover costs of procurement contracts

(3) For greater certainty, the OPA may, subject to the regulations, establish and impose charges to recover from consumers its costs and payments under procurement contracts. 2004, c. 23, Sched. A, s. 31 (2).

Board deemed to approve recovery

(4) The OPA's recovery of its costs and payments related to procurement contracts shall be deemed to be approved by the Board. 2004, c. 23, Sched. A, s. 31 (2).

Review of requirements and fees

25.21 (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22. 2004, c. 23, Sched. A, s. 32.

Board's powers

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations. 2004, c. 23, Sched. A, s. 32.

Same

(3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the OPA. 2004, c. 23, Sched. A, s. 32.

Changes in fees

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board. 2004, c. 23, Sched. A, s. 32.

Hearing

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so. 2004, c. 23, Sched. A, s. 32.

Transitional, 2005 fiscal year

(6) Despite subsection (1), the OPA shall submit its proposed expenditure and revenue requirements for its 2005 fiscal year and the fees it proposes to charge during that fiscal year to the Minister for review not later than 30 days after the Minister approves or is deemed to approve the OPA's proposed business plan for the 2005 fiscal year under section 25.22. 2004, c. 23, Sched. A, s. 32.

Same

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(7) Despite subsections (2) and (4), the fees for the OPA's 2005 fiscal year or for part of that year may be established and imposed by regulation. 2004, c. 23, Sched. A, s. 32.

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry. 2004, c. 23, Sched. B, s. 1.

Facilitation of integrated power system plans

(2) In exercising its powers and performing its duties under this or any other Act in relation to electricity, the Board shall facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 1.

**Ontario Energy
Board**

**Commission de l'énergie
de l'Ontario**



EB-2007-0707

**IN THE MATTER OF AN APPLICATION BY THE
ONTARIO POWER AUTHORITY**

INTEGRATED POWER SYSTEM PLAN ISSUES

BEFORE: Pamela Nowina
Vice Chair, Presiding Member

Ken Quesnelle
Member

David Balsille
Member

DECISION WITH REASONS

March 26, 2008

GENERAL MATTERS

Legislative Framework

The Board's jurisdiction to review and approve the IPSP and the procurement processes proposed by the OPA is found in sections 25.30 and 25.31 of the Electricity Act. Subsection 4 of section 25.30 reads:

(4) The Board shall review each integrated power system plan submitted by the OPA to ensure it complies with any directions issued by the Minister and is economically prudent and cost effective.

The Minister issued the Supply Mix Directive on June 13, 2006 ("the Directive"), which directed the OPA to create the IPSP to meet certain government goals, and required that the Plan comply with Ontario Regulation 424/04 ("the Regulation"). In addition, the government passed Ontario Regulation 426/04 setting various requirements for the OPA in developing and implementing the procurement processes.

The OPA Revised Issues List (Appendix B of this Decision) did not contain overall or "summary" issues setting out the two tests in section 25.30(4) of the Electricity Act, but used the tests in creating headings for the Revised Issues List. The Board's organization of the approved Issues List has dispensed with these headings. It is evident that the Board must make findings in accordance with the evidence, assessing that evidence against the legislative tests. The tests from the legislation appear as a preamble in the Issues List.

All the issues in the review of the IPSP will be considered in the context of the tests in the legislation. In addition, the Board must use its expertise and judgment to determine whether the IPSP as a whole meets the overarching tests of the Act. It is possible that although an individual part of the Plan may not meet each part of the legislative test, the Plan, taken as a whole, remains economically prudent and cost effective.

Several parties submitted that the objectives in section 1 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Schedule B. ("the OEB Act") apply to the Board's exercise of its jurisdiction in this proceeding.

Section 1 reads:

1(1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.

Several of the parties, including AMPCO and Brookfield, who argued for the relevance of Section 1, maintained that the section provides an overriding jurisdiction beyond that granted under sections 25.30(4) and 25.31(4) of the Electricity Act. In contrast, CCC argued that the specific power granted in section 25.30(4) of the Electricity Act overrides the general authority set out in section 1 of the OEB Act.

The Board finds that its mandate in relation to the review of the IPSP and procurement processes is found in sections 25.30(4) and 25.31(4) of the Electricity Act. The Board agrees that section 1 of the OEB Act informs the Board in the exercise of that mandate. However, section 1 is not, in the Board's view, a source of independent or incremental responsibility that can override the direction that has been provided by the legislature in relation to the Board's mandate as set out in sections 25.30(4) and 25.31(4) of the Electricity Act. This is confirmed by the wording of section 1 itself, which refers to the objectives as guiding the Board "in carrying out its responsibilities under" the OEB Act or any other Act. This indicates that the responsibilities of the Board are to be found outside section 1, and not within that section itself.

The Board's Report

On December 27th, 2006 the Board issued its "Report of the Board on the Review of, and Filing Guidelines Applicable to, the Ontario Power Authority's Integrated Power System Plan and Procurement Processes". The purpose of this Report, as stated in the document, is to "provide guidance in relation to the approach being used by the Board in reviewing the IPSP and the OPA's procurement processes, as well as in relation to the Board's expectations regarding the OPA's filings."

The Speaker: All those against, please rise and be recognized by the Clerk.

Nays

Arnott, Ted
Baird, John R.
Barrett, Toby
Bisson, Gilles
Churley, Marilyn
Dunlop, Garfield
Hampton, Howard
Hardeman, Ernie
Horwath, Andrea

Hudak, Tim
Jackson, Cameron
Klees, Frank
Kormos, Peter
Marchese, Rosario
Miller, Norm
Murdoch, Bill
O'Toole, John
Ouellette, Jerry J.

Prue, Michael
Runciman, Robert W.
Scott, Laurie
Sterling, Norman W.
Wilson, Jim
Witmer, Elizabeth
Yakabuski, John

Clerk of the House (Mr Claude L. DesRosiers): The ayes are 56; the nays are 25.

The Speaker: I declare the motion carried.

STATEMENTS BY THE MINISTRY AND RESPONSES

ELECTRICITY RESTRUCTURING

Hon Dwight Duncan (Minister of Energy, Government House Leader): For the past 10 years, the people of this province have witnessed our electricity system decline from being the envy of the world to a point where if we don't act quickly and prudently, we will find ourselves in very serious trouble. With this legislation, we begin to unravel the mess that was left by the previous government, as witnessed in Bill 35. Of Ontario's present generation capacity of 30,000 megawatts, almost 18,000 megawatts are due for retirement or refurbishment by 2020. During that period, peak demand is expected to grow by 400 megawatts per year. We find ourselves in this situation because previous governments failed to act prudently, failed to act responsibly and sometimes just failed to act.

From its first days in office, the McGuinty government has made energy issues a top priority and has moved boldly to bring positive change where it was desperately needed, but we have much to do to secure our energy future. This we know for certain: All else remaining constant, if Ontario's electricity system were left to continue on the course it has followed, it would cease to serve us, cease to power our economy and cease to be the enabler it has been for more than a century.

Interjections.

The Speaker (Hon Alvin Curling): Order. Member Nepean-Carleton, I'd like you to be quiet so I can hear the minister.

Hon Mr Duncan: Therefore, it gives me great pride to stand in the House today to introduce the proposed Electricity Restructuring Act for consideration by this assembly. Through this legislation, we are charting new ground in the history of Ontario's electricity sector. We are putting Ontario back on a solid footing by taking a new approach that addresses the critical need for increased supply, increased conservation, consumers' desire

for price stability, the importance of public leadership and the need for private investment.

Our plan includes a strong public leadership role, clear accountabilities and a coordinated planning approach to address the growing gap between electricity supply and demand, in order to keep the lights on now and far into the future. Beyond all else, our proposed legislation will create stability in a sector that has been rocked far too often. It would reorganize the institutional structure in a way that will best suit the people of Ontario over the long term.

Under our proposed legislation, the Ontario government would continue to set targets for conservation and electricity from renewable sources and set guidelines for diversity of supply. However, responsibility for ensuring long-term supply adequacy, a mandate that no existing institution in Ontario's electricity sector now carries, would belong to a new institution, the Ontario Power Authority. It will ensure that never again will we find ourselves in the predicament we're in today.

The power authority would assess adequacy and reliability of electricity resources and forecast future demand. It would also prepare an integrated system plan for generation, transmission and conservation, to be reviewed by the Ontario Energy Board. In addition to its planning functions, the power authority would have the power to procure new supply and demand management initiatives, either by competition or by contract. When necessary, it would use a competitive and transparent procurement process which would foster innovative and creative approaches to meeting our supply needs.

It's crucial that private investors be allowed to enter Ontario and support the construction of the thousands of megawatts of electricity that we need to build over the next 15 years. We must send a clear and unambiguous message that Ontario's electricity sector is a great place in which to invest.

Having a fully functioning electricity sector is not only about generating raw power. To that end, the power authority would establish a conservation bureau, headed by a chief energy conservation officer, to provide leadership in planning and coordination of electricity conservation and demand management measures that will help consumers save energy and money. This would be the first time for this type of initiative in Ontario. The conservation bureau would help us build a true conservation culture, which, as the Premier has clearly stated, must be a cornerstone of Ontario's long-term energy future.

Under the proposed legislation, the wholesale electricity market would continue to operate but there would be several changes in the oversight mechanisms. The Independent Electricity Market Operator, or IMO, would be renamed the Independent Electricity System Operator, or IESO. It would continue to operate the wholesale market and be responsible for the operation and reliability of the power system. Responsibility for the market surveillance panel would be transferred from the IMO to the Ontario Energy Board. The Ontario Energy Board already has oversight powers to guard against abuse of

market power. The transfer of the market surveillance panel to the board is consistent with the board's consumer protection responsibilities and will consolidate and strengthen this mandate.

Under the proposed legislation, the Ontario Energy Board would continue to have a strong role in protecting consumers through licensing and rate regulation, and would ensure economic efficiency, cost-effectiveness and financial viability of the elements of Ontario's electricity system.

With regard to electricity rates, the board would approve an annual rate plan for low-volume and other small consumers, who would pay a blended price based on regulated, contract and forecasted competitive prices. This would ensure that prices to consumers are fair, stable and predictable and that those who use power will pay its true price.

Under the proposed legislation, consumers who do not wish to participate in the regulated rate plan would have other options, such as purchasing their electricity from energy retailers.

Medium and large businesses would continue to have the flexibility to pay the market price for electricity, or could use energy retailers or financial hedging instruments to manage energy costs.

There is no doubt that this legislation is very complex. In addition, there are many technical regulations that will need careful and thorough attention because they will have far-reaching implications for our citizens and our economy.

Accordingly, this bill will be subject to extensive consultation and input over the summer in order to ensure we get it right, and to ensure that changes are made in the best interests of Ontarians.

We know we will need the ongoing benefit of the ideas, expertise and dedication of those in the electricity sector to meet the challenges that face us. We also invite all citizens to bring us their ideas and concerns at those hearings.

If we work together, we can build an Ontario that has an electricity supply that is the envy of our competitors and a magnet for investors. If we work together, we can make up for over a decade lost in Ontario's electricity sector and ensure Ontario's prosperity for decades to come.

The proposed legislation is a start. By ensuring a reliable, sustainable and diverse supply of power at stable, competitive prices, and creating a conservation culture, we are delivering the real, positive change that Ontarians need and deserve.

The Speaker: Responses?

Mr John O'Toole (Durham): I want to first say that I attended the minister's announcement just a short time ago in the press gallery, and it really is important that I stand here today and recognize former ministers John Baird and Jim Wilson.

There's absolutely nothing new in this bill. In fact, it's a reannouncement of what I heard on April 15 at the Empire Club. Really, the only things you've added here

are two new layers of bureaucracy, and how you're going to pay for that on top of that is going to be in the bill. At the end of the day, this is about raising the cost of electricity.

The new power authority you've announced replaces the IMO, which has been doing the planning and implementation. No one here on this side would disagree with the conservation authority you're announcing. The only issue is, you've cancelled the tax credits in your last budget that we had already implemented on energy-efficient appliances.

Minister, you've got to know that you're running out of time. The clock is ticking. While you're eliminating 25% of the generating capacity, what is the cost to the taxpayers of Ontario? Ultimately, all of this is going to show up in your bill at your house.

The consumers of Ontario should be put on notice today by you and this government that you have no intention of keeping any promises. This is yet another broken promise, because you are raising electricity prices.

Look at the objectives of our government. No one would disagree with sustainability, increased conservation and engaging the private sector; they're all laudable. In fact, we support those initiatives. But there's a gaping hole in the generation part of the equation. You know that. In three years, this province could be plunged into darkness because of your inaction. You've created more bureaucracy and not one new kilowatt of power.

Minister, you should know that your false commitment to shut down the five coal plants, which are laudable objectives, was hasty and reckless. You simply can't remove 7,500 megawatts of generating capacity out of the system with no plan. How long is it going to take you to replace that lost generation capacity? The people of Ontario should be concerned, because at the end of the day, you, the consumer of Ontario—that's you and I—are going to pay the price.

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The minister isn't being truthful. In fact, I wonder if his own caucus is aware of the great risk. There has been much study done on this. Our previous minister, John Baird, set up the generation-conservation-supply task force, an excellent report. There is the Manley report, the Epp report; you can go back to the Macdonald report. We've studied.

Over the summer, I'm going to be watching and I'm going to be encouraging the consumers of Ontario—the small businesses, the dairy farmers who know their price for electricity is going to double. That's the warning shot that's been made here today.

Minister, you really have no plan except to create more bureaucracy and increase the price. Of course you can create more supply, but the issue remains, at what price? You think you can provide natural gas as a short-term solution, but with all the information I've heard on the supply of natural gas or liquefied natural gas, the question remains for all the experts, at what price?

Be straight with the people of Ontario and tell them your bill today really isn't the restructuring of electricity.

GEC/PEMBINA/OSEA INTERROGATORY 2

QUESTION

ISSUE 1.2b

Reference: B-1-1, page 3

- a) What programs are planned and what budget is allocated for each program that OPA intends to pursue in 2008 to address local supply constraints with targeted supply, targeted CDM or a combination?
- b) For each local constraint identified, please indicate the nature and extent of the supply problem being addressed and explain how OPA's proposed approach was developed in light of potential demand side and supply side responses identified. Please provide all studies that identify the potential for fast track CDM efforts in these particular areas and for renewable and higher efficiency generation such as CHP.

RESPONSE

- a) The OPA uses integrated solutions to address all local area supply constraints. Resources in Power System Planning, Electricity Resources, Conservation, Communications, and Legal and Regulatory all contribute to these integrated solutions. However, the OPA does not budget nor track its time in terms of local area supply projects versus other types of projects.
- b) The OPA considers this matter outside the scope of this proceeding, however, some information on the local area supply projects can be found in the Integrated Power System Plan Proceeding (see EB-2007-0707, Exhibit E, Tab 5).

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