EB-2012-0340

COMMENTS OF THE CONSUMERS COUNCIL OF CANADA

RE: ONTARIO ENERGY BOARD CONSULTATION REGARDING INCENTIVE RATEMAKING OPTIONS FOR ONTARIO POWER GENERATION'S PRESECRIBED GENERATION ASSETS

October 1, 2012

Introduction:

On July 31, 2012, the Ontario Energy Board ("Board") initiated a consultation process regarding incentive rate-making ("IRM") options for Ontario Power Generation's ("OPG") prescribed assets. On August 28, 2012, Board Staff conducted a Stakeholder Meeting. At that meeting there were presentations from Power Advisory LLC, London Economics and OPG. By letter dated August 30, 2012 the Board set out instructions for making written submissions on October 1, 2012. In addition, by letter dated September 19, 2012, the Board made provisions for a second round of comments due October 31, 2012.

These are the comments of the Consumers Council of Canada ("Council"). The Council has reviewed the Power Advisory paper and participated in the stakeholder meeting on August 28.

Comments:

In its presentation to the stakeholders OPG set out its views on IRM and its potential applicability to OPG. The following points summarize OPG's views:

1. Incentive regulation should not involve radical changes as the current framework includes significant incentives;
2. Additional incentives should support performance objectives that are meaningful, measurable and attainable. OPG believes its current balanced scorecard meets this standard;
3. Benchmarking is a useful tool for analysis of significant deviations in cost or performance, but should not be used to directly set rates;
4. Multi-year capital plans would provide greater certainty to both ratepayers and utilities during an incentive regulation period, providing rate smoothing opportunities and eliminating the incentive to back-load capital investments towards the end of incentive rate period and improved the ability of the utility to fund capital requirements;
5. Price caps and other forms of incentive regulation work in stable business environments and are less suited in periods of significant transition and re-investment in capital;
6. Separate IRM models for hydro and nuclear can be workable due to separate operational businesses and different operating environments;
7. Earnings sharing should be adopted to limit the risk of unintended consequences;
8. Base rates should be set based on cost of service principles;
9. TFP studies may be problematic as data availability and relevance to future operations are concerns;

10. The implementation of IRM to nuclear should be delayed until Pickering is out of service and Darlington is refurbished rather than develop a series of fixes required to adapt IRM to such circumstances;
11. The onset of "lumpy" capital requirements must be dealt with perhaps through a generic capital module;
12. Data availability is an issue as many of OPG's competitors are unregulated;
13. Efficiency studies based on past performance are likely of little relevance as OPG is going through dramatic changes to its operations.

In addition OPG set out how it intends to proceed with future applications:

1. OPG will file a hydro "rebasing application in 2013 for a typical two-year test period (2014-2015);
2. OPG will conduct additional analyses during 2013 and 2014 as a result of any guidance received from this current process;
3. In 2015 OPG would file an IRM application with the intent to establish an IRM that would be applied for 2016 rates;
4. The nuclear operations would be subject to cost of service until Darlington refurbishment is complete and Pickering is out of service.

In large measure the Council is in agreement with OPG. OPG is not a typical regulated entity. Its operations are complex and some of the most significant decisions regarding those operations are made by its shareholder, the Government of Ontario. Attempting to apply a comprehensive IRM model to OPG's entire operations, would be very difficult. Major decisions regarding the operations at Pickering and the potential to extend those operations have yet to be determined. In addition, further decisions must be made regarding the Darlington Refurbishment and any new facilities. IRM works best in a steady state environment and OPG's operations will be extremely variable over the next decade.

The consideration of any IRM models should be limited to the hydroelectric side of the business. There is a considerable amount of uncertainty with respect to both cost and output with respect to the nuclear side of the business. A cost of service approach to regulating nuclear should be maintained at this time.

With respect to the hydroelectric side of the business, some form of IRM may be appropriate, but in the context of this consultation it is premature to determine the form of any IRM that should apply to OPG. OPG intends to file for a two-year approval in 2013 under a cost of service application. The Council supports this approach. Once that proceeding has been concluded the Council submits that the consultation process should be reconvened to assess options and approaches. As acknowledged by OPG there are some incentives currently in place, like the Hydroelectric Incentive Mechanism that should be maintained and potentially enhanced. Internally OPG has existing performance targets.

It is not clear when OPG intends to file again for a payment amount approval for its nuclear operations. The Board may want to consider mandating a review to follow the proposed rebasing application for the hydroelectric operations. Regulatory oversight is critical, and in light of all of the proposed changes to its nuclear operations a review in the next few years would be in the best interests of Ontario ratepayers. This may be more critical given the fact that the IPSP process has effectively been halted.